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No. 984

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1962.

GUILLERMO GONZALEZ, et al.,
*Appellants,*

*vs.*

CITY OF CHICAGO, a municipal corporation,
*Appellee.*

ON APPEAL FROM THE
SUPREME COURT OF ILLINOIS

## JURISDICTIONAL STATEMENT

FREDERIC D. HOUGHTELING
GEORGE W. OVERTON
F. RAYMOND MARKS, JR.,
DONALD PAGE MOORE
Attorneys for Appellants

OVERTON, MARKS, SIMONS & MOORE
105 W. Adams Street
Chicago 3, Illinois
CEntral 6-6945
Of Counsel

The Scheffer Press, Inc.—ANdover 3-6850

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## JURISDICTIONAL STATEMENT

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Appellants, Guillermo Gonzalez, Margarito Gonzalez, Mildred Senese, and Anthony Fiore, appeal from the judgments of the Supreme Court of Illinois, entered on February 26, 1963, affirming the judgments and orders of the Circuit Court of Cook County, whereby that court overruled the traverses of appellants and gave judgment of condemnation in favor of appellee. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of this appeal, and that substantial questions are presented.

## OPINION BELOW.

The opinion of the Supreme Court of Illinois, which has not yet been officially reported, is reprinted as Appendix A to this Statement. The orders of affirmance of the Supreme Court of Illinois are reprinted as Appendix B hereto. The Circuit Court of Cook County rendered no written opinion. Its orders overruling appellants' traverses, incorporating its findings and conclusions, are reprinted as Appendices C and D hereto.

## JURISDICTION.

These actions, seeking to condemn property belonging to appellants and others, were brought in the Circuit Court of Cook County by the Chicago Land Clearance Commission under the alleged authority of the Illinois Blighted Areas Redevelopment Act, 67½ Ill.Rev.Stat. 1961 §§63-91, and were continued by appellee City of Chicago under the alleged authority of the Illinois Urban Renewal Consolidation Act, 67½ Ill.Rev.Stat.1961 §§91.101-91.136. Appellants and others filed traverses challenging the legality of the taking, on the grounds, *inter alia*, that the aforesaid Illinois statutes, as here applied, are repugnant to the Constitution and laws of the United States.

The Circuit Court overruled the traverses on all grounds and entered final judgments of condemnation against appellants and in favor of appellee, which judgments were affirmed by the Illinois Supreme Court on February 26, 1963. Notice of appeal was filed in that court on March 22, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2). The following decisions sustain this Court's jurisdiction of the present appeal: *Slochower v. Board of Education*, 350 U.S. 551

(1956); *Morey* v. *Doud*, 354 U.S. 457 (1957); *Niemotko* v. *Maryland*, 340 U.S. 268 (1951); *Mercantile National Bank at Dallas* v. *Langdeau*, 83 S.Ct. (Adv.) 520 (Jan. 21, 1963).

## STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

United States Constitution, Article VI, clause 2:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

United States Constitution, Amendment XIV, Section 1:

> ". . . [N]or shall any State deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Housing Act of 1949, Title I, 42 U.S.C. §§1441-1462, 63 Stat. 413, as amended.

Illinois Blighted Areas Redevelopment Act of 1947 ("Blighted Areas Act"), 67½ Ill.Rev.Stat.1961 §§63-91, Laws 1947, p. 1072, as amended. (Relevant excerpts reprinted as Appendix E hereto.)

Illinois Urban Community Conservation Act ("Conservation Act"), 67½ Ill.Rev.Stat.1961 §§91.8-91.16, Laws 1953, p. 1240, as amended. (Relevant excerpts reprinted as Appendix F hereto.)

Illinois Urban Renewal Consolidation Act of 1961 ("Consolidation Act"), 67½ Ill.Rev.Stat.1961 §§91.101-91.136, Laws 1961, p. 3308. (Relevant excerpts reprinted as Appendix G hereto.)

## QUESTIONS PRESENTED.

1. Can a state, consistently with due process of law, authorize a local urban renewal agency to determine that a particular area is slum and blighted without such agency having undertaken any bona fide investigation of conditions in the area?

2. Can a state, consistently with due process of law, authorize a local urban renewal agency to determine that a particular area is slum and blighted without affording notice and a full and fair hearing to the residents and property owners of the area?

3. Is a judicial hearing on the existence of slum and blight in an area, at the time condemnation proceedings are brought, an adequate substitute for a judicially reviewable agency hearing before the area is designated?

4. Where a state by law requires an urban renewal agency to hold a public hearing before designating an area as a conservation (spot-clearance) area, but does not require such agency to hold any such hearing before designating an area as a slum and blighted (total-clearance) area, and in the latter case no such agency hearing is in fact held, are property owners, residents, and other affected persons in the latter area denied the equal protection of the laws?

5. Where a state by law gives every property owner in a conservation area the right to be heard before the urban renewal agency may commence proceedings to condemn his property, but affords no such right to be heard to property owners in a slum and blighted area, are the latter denied the equal protection of the laws?

6. Is the definition of a slum and blighted area in the Illinois statutes, as interpreted by the Illinois Supreme Court, so vague and unbounded that property owners and residents of an area cannot ascertain what course of conduct they should follow in order to avoid having their area condemned as slum and blighted?

7. Is the definition of a slum and blighted area in the Illinois statutes, as interpreted by the Illinois Supreme Court, so vague and unbounded as to make it impossible for this Court to ascertain whether appellants' property is being taken for a bona fide public use?

8. Does the Illinois Supreme Court's interpretation of the statutory definition of a slum and blighted area result in vesting arbitrary and unreviewable discretion in the administrative agency and/or the trial court?

9. May a local urban renewal agency proceed with projects, to which the federal Housing Act of 1949 has become applicable by reason of such local agency's application for and receipt of federal subsidy grants under said Act, without complying with the Act's requirements?

10. Are the courts of Illinois under a federal constitutional obligation to enforce the requirements of the Housing Act of 1949 and regulations thereunder at the instance of persons for whose protection the requirements at issue were enacted?

## STATEMENT OF THE CASE.

### Proceedings Below.

The Chicago Land Clearance Commission filed petitions to condemn in the Circuit Court of Cook County on April 17 and 18, 1963, seeking to acquire the property of appellants and others for clearance projects under the Blighted Areas Act (Abst. 3, 17).[1]

Appellants and others filed traverses (Abst. 10, 28) to challenge the legality of a taking, alleging *inter alia* that the requirements of due process of law under the Fourteenth Amendment had not been met, and thus calling into question the constitutionality of the Blighted Areas Act if interpreted as authorizing the taking in this case (Abst. 42-43, 93-94, 96-97). The traverses further alleged that the requirements of the federal Housing Act and regulations thereunder, here applicable and enforceable in the Illinois courts because the Land Clearance Commission had applied for and received a federal subsidy under said Act for these projects (Abst. 30), had likewise not been met (Abst. 35-47).

The traverses were consolidated for hearing and a trial was held in the Circuit Court, on the sole issue of

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[1] The record being filed in this Court consists of (1) the Abstract of Record filed by appellants in the Illinois Supreme Court, in conformity with its rules, consisting of three volumes bound in black Acco covers, cited herein as "Abst."; (2) the Additional Abstract of Record filed by appellee in the Illinois Supreme Court, a single printed volume, cited herein as "Add. Abst."; (3) the original exhibits offered in evidence by both sides in the trial court and included in the Record on Appeal to the Illinois Supreme Court, which are included in this record by leave of the Illinois Supreme Court, and are cited herein as "R."; and (4) the consolidation order, opinion, and orders of affirmance of the Illinois Supreme Court, together with the notice of appeal. The appendices to this Statement will be cited herein as "Appx."

whether the Roosevelt-Blue Island Tract, one of the three project areas in question, was in fact a slum and blighted area within the meaning of the Illinois statutes. At this trial, appellants were permitted to produce extrinsic evidence tending to negate slum and blight in that tract; however, the court denied appellants discovery as to the Commission's records and employees (Abst. 116). The trial resulted in a finding favorable to the Commission (Abst. 12-15; Appx. C). Meanwhile, the trial court announced, following preliminary argument, that it would not hear evidence or permit discovery on the other grounds of traverse tendered by appellants, since it deemed them insufficient as a matter of law (Abst. 114-115).

At this point the Land Clearance Commission was merged pursuant to the Consolidation Act into the City of Chicago's Department of Urban Renewal,[1] and the City moved to be substituted as condemnor in these actions (Abst. 12, 100). Appellants filed further traverses (Abst. 15, 105), raising further issues of due process and equal protection (Abst. 110-111), which the trial court also held insufficient as a matter of law (Abst. 114). The trial court then entered an order overruling all of the traverses (Abst. 15, 113; Appx. D). From subsequent final judgments divesting appellants of their property and awarding compensation therefor (Abst. 16, 119), appellants appealed to the Illinois Supreme Court, calling into question the legality of the taking but not the amount of compensation (Abst. 16, 120). That court consolidated the appeals and affirmed.

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[1] Although the Land Clearance Commission is (or was) an independent municipal corporation, while the Department of Urban Renewal is a part of the city government, both are alike in that each consists of a five-member board, appointed by the mayor, whose decisions are taken collectively, 67½ Ill.Rev.Stat.1961 §§67, 91.105.

**Related Federal Case.**

This appeal is intimately connected with No. 861 on the Court's current docket, entitled *Harrison-Halsted Community Group, Inc., et al., Petitioners,* v. *Housing and Home Finance Agency, et al., Respondents,* on Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit (hereinafter sometimes referred to as "No. 861" or "the federal case"). That action arose in the United States District Court for the Northern District of Illinois, where three of these appellants, together with 277 other individual plaintiffs and their neighborhood organization, sought a declaratory judgment and injunction against the carrying out of the same urban renewal projects which are at issue here. Plaintiffs in that action are presently seeking to have this Court review the dismissal thereof by the District Court for want of federal jurisdiction, which was affirmed by the Court of Appeals.

The issues presented by the federal and state actions overlap extensively. In particular, both actions raise the issues of (1) whether the federal Housing Act was complied with, and who has standing to insist on such compliance; and (2) whether due process of law requires a full and fair hearing and a bona fide fact-finding procedure by the local urban renewal agencies. On the other hand, the federal action raises certain issues not involved here, and vice versa.

Since it appears that this Jurisdictional Statement and the Petition for Certiorari in No. 861 will be before this Court for consideration at approximately the same time, appellants will treat more cursorily here those

points which have already been covered in the Petition in No. 861, and will take the liberty of referring the Court to that Petition and particularly to the appendices thereto for certain material, rather than repeating it in full here.

**Facts Alleged in the Traverses.**

Since the trial court, without hearing evidence, overruled the traverses as a matter of law on all issues except the physical condition of the Roosevelt-Blue Island Tract, the facts well pleaded in the traverses relating to all other issues are to be taken as true for purposes of appeal, as with a complaint dismissed on motion.

The history of the present controversy is adverted to briefly by the Illinois Supreme Court (Appx. 1a), and is described in considerably greater detail in the Court of Appeals' opinion in the related federal case (310 F.2d 99, 100-103; No. 861, Appendices to Petition, pp. 1a-7a). It suffices here to say that the controversy concerns three adjacent tracts of land on the near west side of Chicago (Abst. 50-52). In September 1956 the Chicago Land Clearance Commission designated the Harrison-Halsted Tract for redevelopment under the Blighted Areas Act, securing the cooperation and support of community residents by promising that the area would be redeveloped for moderate-income housing; an official redevelopment plan to this effect was adopted in January 1958 (Abst. 53-55). As part of the same overall program, a larger area immediately to the west of Harrison-Halsted was designated as the Near West Side Conservation Area, and a conservation plan adopted (Abst. 56-57).

Once Harrison-Halsted was largely cleared, however, the City secretly negotiated an agreement to turn this tract over to the University of Illinois as the nucleus for its new Chicago campus (Abst. 57-58). To secure for the University the full acreage it wanted, at a federally subsidized price, the City also committed itself to acquire and turn over to the University two adjacent tracts; Roosevelt-Blue Island, which had not yet been surveyed at all, and Congress-Racine, almost all of which was then part of the Near West Side Conservation Area.[1] The Land Clearance Commission thereafter made a hasty and purely sham survey of these two tracts; then, without according the people of the area any hearing, and in disregard of the actual conditions in these two tracts, the Commission designated them as "slum and blighted areas," and resolved to clear them completely and convey all three tracts to the University (Abst. 59-61, 93-96).

The city applied for and, over the protests of these appellants and others (Abst. 65), received federal subsidy grants under Title I of the Housing Act for all three projects, despite the fact that a number of requirements of the Housing Act and the HHFA's regulations thereunder had not been complied with. The most important of these violations of the Housing Act and regulations relate to lack of a proper relocation program (Abst. 37-39); failure to consult minority group leaders or replace minority group housing (Abst. 39-40); failure of the City to have a general plan, and failure of these projects to comply with such partial and incomplete plans as the City does have (Abst. 37); and failure of the

[1] Under Illinois law, a conservation area is one which is not a slum and blighted area, although in danger of becoming one, 67½ Ill.Rev.Stat.1961 §§91.10(d), 91.103(m).

Land Clearance Commission to hold a full and fair hearing, nor any other kind of hearing, or to engage in a good-faith fact-finding procedure with respect to the Roosevelt-Blue Island and Congress-Racine Tracts (Abst. 42-44). (For greater detail, see the Petition in No. 861, pp. 8-10.)

**Condition of the Roosevelt-Blue Island Tract.**

While appellants do not in any way accept the statements in the opinion of the Illinois Supreme Court (Appx. 6a) as a fair or objective summary of the evidence before the trial court, they naturally do not expect this Court to reweigh and resolve conflicts in that evidence. However, it is necessary to advert to certain of the evidence before the trial court, together with its rulings, findings, and conclusions, in order to show how the action of the Illinois Supreme Court has infringed appellants' constitutional rights by leaving the statutory definition of a slum and blighted area unconstitutionally vague. Moreover, where constitutional rights are at stake, this Court is not bound by a state court's conclusions or characterizations of the evidence. *Niemotko* v. *Maryland*, 340 U.S. 268 (1951).

The trial court ruled that if the areas being condemned were not in fact slum and blighted within the definition of the Blighted Areas Act and the Consolidation Act, there would be no public use to justify the taking, so that this would be a valid ground of traverse. As to the Harrison-Halsted Tract (appellants Mildred Senese and Anthony Fiore), however, the court held that since appellants had supported the original designation, they could not now challenge it, even though the traverse alleged that clearance under the original plan had removed all slum and blight in the area (Abst. 45). The

court also declined to hear evidence as to Congress-Racine, since no property there had (or has) yet been sought to be condemned (Abst. 123c). This left only Roosevelt-Blue Island (appellants Guillermo and Margarito Gonzalez) to be considered.

The trial court ruled that, once appellants introduced some evidence tending to negate slum and blight, the Commission had the burden of proving that Roosevelt-Blue Island fell within the statutory definition (Abst. 13), with no weight being given to the Commission's own prior determination to that effect.

Appellants' principal witness, an architect and former city building plans examiner who at their request had inspected every tenth parcel in the area, testified that, on the basis of standards contained in the Chicago Building, Housing, and Zoning Codes, and in the Land Clearance Commission's own Enumerator's Manual (Abst. 415), only a minority of the buildings he inspected exhibited one or more of the statutory indicia of blight, mostly in a relative minor degree (Abst. 125-189).[1] Appellants also introduced the 1960 U.S. Census of Housing to show that only a relatively small percentage of the housing units in Roosevelt-Blue Island were there classified as dilapidated (Abst. 386-386b, 428-441). Two priests and a doctor testified favorably concerning health and social conditions in the area (Abst. 226-243).

The Commission called to the stand no witness who had taken part in its alleged investigation of Roosevelt-Blue Island in March 1961, nor any of its officers or regular employees. (Appellants, as already noted, were

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[1] The witness testified about each building he inspected separately; the summarization was made by counsel in argument and brief.

not permitted to do so.) Instead, it put on six real estate appraisers who had been through the area nearly a year later to ascertain land and building values (Abst. 307-370). These witnesses testified that they found a high percentage of the buildings suffering from dilapidation, obsolescence, and/or deleterious land use. (They did not testify concerning any other of the statutory blight factors.) On cross-examination, they acknowledged that they defined these three factors strictly in terms of effect on market value, and that the defects they cited were not necessarily harmful or dangerous to the inhabitants or the public, but in many cases were based on purely public preferences as to style and other aesthetic factors (*e.g.*, Abst. 328, 351-353, 358). The Commission also produced one witness as to health conditions in the area; however, it came out that his statistics were based on only a handful of cases (Abst. 383-384).

The trial court made findings that "many of the structures" in Roosevelt-Blue Island were dilapidated within the meaning of the statute, and that "there are present structures which contain" the other statutory blight factors (obsolescence, etc.). The trial court further ruled that the physical conditions in the area must be shown to be detrimental to the public health, safety, morals or welfare in order for the area to be designated as slum and blighted; but it made a finding that such detriment had in fact been shown. On the basis of these findings, the trial court concluded that Roosevelt-Blue Island was in fact a slum and blighted area (Abst. 13-15; Appx. C).

The Illinois Supreme Court (Appx. 6a-7a) approved this conclusion, citing a few random bits of testimony in support thereof. Although appellants argued that the statutes should be read as requiring a predominance of blighted buildings in the area, the court expressly re-

fused to fix any standards as to the quantum of blight which must be present. Appellants also urged the court to clarify the meaning of the words "dilapidation," "obsolescence," etc., in the statutory definition, in the light of the conflict of standards in the trial court, but the court passed over this issue in silence. In one respect, the Illinois Supreme Court modified the rulings of the trial court; where as the trial court had held that the commission must show that the physical factors in the area are detrimental to the public health, safety, morals or welfare, the Illinois Supreme Court held that no such showing is necessary. (Appellants had argued that the trial court's finding on this point was without support in the evidence.)

**Federal Questions and How They Were Preserved.**

(1) Appellants contend that the failure of the Chicago Land Clearance Commission to afford them a hearing, and in particular a full and fair quasi-judicial hearing, prior to designating Roosevelt-Blue Island a slum and blighted area, was a denial of due process of law, and of equal protection of the laws. They raised these points in their traverses (Abst. 42-43, 110-111), argued them in the trial court, and raised them again in brief and argument on appeal. These points are explicitly discussed and passed upon by the Illinois Supreme Court in its opinion (Appx. 2a-3a).

(2) Appellants further contend that due process required the Land Clearance Commission to engage in a good-faith fact-finding procedure before designating Roosevelt-Blue Island as slum and blighted. This contention also was first made in the traverses (Abst. 96-97), was argued and overruled in the trial court, and was again raised in brief and argument in the Illinois

Supreme Court. That court's opinion does not explicitly deal with this contention, but implicitly rejects it as part of the closely related hearing contention.

(3) Appellants contend that, as interpreted by the Illinois Supreme Court, the Illinois statutory definition of a slum and blighted area is unconstitutionally vague. This constitutional claim first arose as the result of the findings and conclusions of the trial court. In their closing argument in the trial court, appellants called attention to the constitutional dangers in accepting the testimony and the standards of appellee's appraiser witnesses. In brief and argument in the Illinois Supreme Court, appellants repeated this warning, and also asserted that failure of the court to set quantitative standards would violate due process of law. That court in its opinion fails to discuss or clarify the conflicting definitions of the statutory blight factors; it does discuss and reject appellants' contentions concerning the required quantum of blight, although not adverting to the constitutional argument advanced. The final element of vagueness arose for the first time as a result of the Illinois Supreme Court's holding that no evidence of actual detriment to the public health, safety, welfare or morals is required.

(4) Appellants contend that the failure of the Land Clearance Commission and the City to comply with the requirements of the Housing Act bar them from proceeding with these federally subsidized projects, and that the state courts are obliged by the Supremacy Clause to enforce these federal statutory requirements. This contention was first raised in the traverses (Abst. 30), was argued and overruled in the trial court, and was raised again in brief and argument in the Illinois Supreme

Court. That court in its opinion explicitly holds that these condemnations may proceed without regard to the alleged violations of the Housing Act (Appx. 5a), although it does not explicitly mention the Supremacy Clause.

## THE QUESTIONS ARE SUBSTANTIAL.

This appeal presents a series of questions concerning the rights of persons affected by urban renewal. Before going on to point out the legal substantiality of the questions here presented, appellants would point out again the enormous significance of these questions to the lives of hundreds of thousands of citizens.

The necessity for attacking the decay which threatens to strangle our cities can hardly be doubted; yet neither can the drastic effects of clearance programs on those who live and work in the project areas. The victims are almost invariably poor, frequently members of minority groups. Clearance often destroys long-established communities and scatters their members, thus depriving these groups of the tight community life which is one of their few protections in the impersonal city. "Relocation" all too often finds the displaced resident being pushed into housing which itself is but a few years or even months from the wrecker's ball. Homeowners find that their "just compensation" will not buy a new home. Neighborhood businesses are frequently wiped out as their customers are dispersed.

The urban renewal progrm is all-pervasive. Almost every state has an urban renewal statute; Illinois alone has dozens of projects under way, each typically affecting several thousand people. Urban renewal is likely to continue for the foreseeable future, and consequently the problems raised by this case will continue to arise.

This Court held in *Berman* v. *Parker*, 348 U.S. 26 (1953), that the substance of urban renewal policies is almost entirely a matter for legislative determination. But this only makes it all the more important that fair *procedure* (not an issue in *Berman*) be observed by urban renewal agencies. It also makes it all the more important that where Congress has laid down certain requirements intended to protect those who will be adversely affected by federally subsidized projects,[1] the intended beneficiaries should have the right to insist that these requirements be complied with.

The net result of the Illinois Supreme Court's decision in this case—particularly when taken together with the Court of Appeals' decision in the related federal case—is that those whose homes and places of business are to be taken for a project whose legality they challenge are left virtually without remedy. The local urban renewal agency, under these decisions, is not required to make any investigation before designating an area as slum and blighted, nor is it required to hold any kind of hearing, let alone a full and fair administrative hearing. Those who act in reliance on a solemnly adopted redevelopment plan are without remedy when the plan is abruptly and arbitrarily changed. Neither state nor federal courts will enforce the protective provisions of the federal Housing Act.

True, owners whose property is sought to be condemned can secure a hearing in the condemnation court as to whether the area in question is slum and blighted; but this remedy is vitiated by the refusal of the Illinois Supreme Court to clarify the statutory definition, or to lay down standards for the trial courts to follow, or to

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[1] Few if any urban renewal projects are not so subsidized.

require diligence in bringing condemnation. The courts hint that they would step in to halt "abuse" (see Appx. 4a), but will not allow the objectors to take discovery or to introduce evidence of abuse. Thus the objectors are left to their often disastrous "fair compensation"; see *Riley* v. *D. C. Redevelopment Land Agency*, 246 F.2d 641 (C.A.D.C. 1957); *Chicago Housing Authority* v. *Lamar*, 21 Ill. 2d 362, 172 N.E. 2d 790 (1961).

Appellants do not seek to have the courts substitute their judgment for that of the duly constituted administrative agencies in matters of policy and discretion; they ask only that the courts require the agencies to obey the law, to stay within their proper sphere, and to arrive at their decisions by applying enunciated objective standards to facts found on the basis of a fairly made-up record. This is the traditional role of the judiciary in supervising expert administrative bodies charged with carrying on great public programs which curtail the rights of some in the interest of all.

## I. DUE PROCESS OF LAW REQUIRES THE LOCAL URBAN RENEWAL AGENCY, BEFORE IT DESIGNATES AN AREA AS SLUM AND BLIGHTED, TO ENGAGE IN A GOOD-FAITH FACT-FINDING PROCEDURE, AND TO AFFORD A FULL AND FAIR ADMINISTRATIVE HEARING.

The Petition for Certiorari in the companion federal case (pp. 26-32) sets forth in some detail the reasons why appellants contend that due process requires a full and fair administrative hearing by the urban renewal agency before it determines an area to be slum and blighted. It is there demonstrated that this determination is one of fact, not policy; that this determination has a drastic effect on the property rights and values of the

limited group of people who live, work, and own property in the area; that the facts which enter into the determination of slum and blight are adjudicative rather than legislative facts, in Professor Davis' useful dichotomy, and should not be decided without affording a full hearing to those most directly affected, who are also those most closely acquainted with the facts. *Opinion to the Governor,* 76 R.I. 249, 69 A.2d 531, 536-7 (1949); *Morgan* v. *United States,* 298 U.S. 468, 480 (1936); *Londoner* v. *City and County of Denver,* 210 U.S. 373 (1908); 1 Davis, *Administrative Law Treatise,* §§7.02-7.04 (1958).

It is also there demonstrated that the determination whether an area is in fact slum and blighted within the statutory definition is not a determination as to the *wisdom* or *necessity* of the exercise of an undoubted power to condemn, but rather a determination whether in the premises such a power exists at all—a jurisdictional fact, in short—since in urban renewal the public use which constitutionally justifies the taking of private property lies precisely in the removal of blight.

Finally, it is demonstrated why a judicial hearing at the time of condemnation is a wholly inadequate substitute for a judicially reviewable administrative hearing at the time of designation: the immediate drastic effect of the slum and blighted designation on property values, *cf. Village of Euclid* v. *Ambler Realty Co.,* 272 U.S. 365 (1926); the long delays between designation and condemnation (in Harrison-Halsted 5½ years); the piecemeal destruction of the neighborhood, see *Chicago Housing Authority* v. *Lamar,* 21 Ill.2d 362, 172 N.E. 2d 790 (1961); the procedural inadequacies of the condemnation remedy; and the unconscionable power to harass and

frustrate objectors which all of these factors give to the agency. As will be shown hereafter, the efficacy of the judicial remedy is reduced even further by the refusal of the Illinois Supreme Court to clarify or set standards in applying the statutory definition.

So far as appellants know, no previous decision of this Court resolves the questions thus presented, although the decisions cited above support appellants' position by principle and analogy.

*A fortiori*, all of the preceding arguments demonstrate why due process requires the urban renewal agency to engage in a bona fide fact-finding procedure before designating an area as slum and blighted. That an agency of limited powers should be permitted to make a determination which has such immediate and drastic effects on the residents of the area, without any kind of investigation, and without any check except a possible piecemeal judicial redetermination of the facts years later, is shocking to the conscience.

## II. BY DENYING APPELLANTS A HEARING BEFORE THE LAND CLEARANCE COMMISSION, ILLINOIS HAS DENIED THEM THE EQUAL PROTECTION OF THE LAWS.

Illinois carries on two main types of urban renewal programs: blighted area projects, for the clearance and redevelopment of slum and blighted areas; and conservation projects, for the rehabilitation (including spot clearance) of areas which are not yet slum and blighted. Until 1961 these were carried out by separate agencies, pursuant to the Blighted Areas Act and the Conservation Act, respectively. Starting in 1961, the Consolidation Act authorized cities having both programs to consolidate them under a department of urban renewal, as Chicago

has now done. The definitions and substantive provisions of the older acts are incorporated in the Consolidation Act without substantial change.

Under the Conservation Act and the conservation sections of the Consolidation Act, the urban renewal agency is required, before designating a conservation area, to hold a public hearing in the area, 67½ Ill.Rev.Stat.1961 §§91.12, 91.121. Furthermore, by separate provision, the urban renewal agency is required to afford every owner affected by condemnation proceedings in a conservation area the opportunity to be heard by the agency before such proceedings may be approved by it. 67½ Ill.Rev. Stat.1961 §§91.11(b), 91.120(b).

On the other hand, the Blighted Areas Act and the blighted areas sections of the Consolidation Act contain no such requirements as to hearings, either before designation or before condemnation, although hearings are authorized and all necessary powers to hold trial-type hearings are conferred, 67½ Ill.Rev.Stat. 1961 §§73, 74, 91.109, 91.110. In fact, the Chicago Land Clearance Commission held no such hearings here as to the Roosevelt-Blue Island and Congress Racine projects.[1]

It is appellants' contention that this discrimination in treatment deprives them of the equal protection of the laws, whether or not a quasi-judicial or any other kind of hearing is deemed to be required by due process of law. Appellants contend that the position of owners, residents, and businessmen in a prospective slum and blighted area does not differ sufficiently from that of

[1] A legislative-type hearing was held, after the Commission had acted, by a committee of the Chicago City Council (Abst. 94-95); but this was obviously not the equivalent of a hearing by the Commission before it acted.

similar persons in a prospective conservation area to justify this discrimination in treatment. Indeed, since the effect of a slum and blighted designation is so much more drastic than that of a conservation area designation, it is the affected persons in the former type of area who are in greater need of the protection afforded by a public hearing.

The principal difference between residents of slum and blighted areas and residents of conservation areas is that the latter tend to be "nicer" people—more favored economically, better educated, politically more influential. It hardly needs be said that none of these factors form a legitimate basis for differentiation in treatment.

Even more indistinguishable is the situation of an individual owner whose property is to be taken as part of a blighted area project, compared with that of an individual owner whose property is to be taken as part of a conservation project. Here, whatever happens to the area as a whole, each individual owner will be equally *out*—deprived of his property and forced to relocate elsewhere. No justification whatever appears for giving a hearing to the owner in the conservation area but denying it to the owner in the blighted area.

The following decisions of this Court suggest that Illinois has here perpetrated an unconstitutional discrimination: *Morey* v. *Doud,* 354 U.S. 457 (1957); *Smith* v. *Cahoon,* 283 U.S. 553 (1931); *Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Skinner* v. *Oklahoma,* 316 U.S. 535 (1942); *Hartford Steam Boiler Ins. Co.* v. *Harrison,* 301 U.S. 459 (1936).

The Illinois Supreme Court offers no rationale whatever for this discrimination; all it says (Appx. 3a) is that the conservation area hearings are legislative in

nature, rather than quasi-judicial. This must be accepted as the law of Illinois, even though the concept of a legislative hearing for a single property owner is certainly passing strange. The implication of the Illinois court's remark seem to be that it considers the right to a legislative hearing to be of such trivial value as not to form the basis of an unconstitutional discrimination.

Although the right to a legislative hearing is certainly not as valuable as the right to a quasi-judicial hearing, appellants cannot agree that it is trivial. The right to a legislative hearing is the right to appeal directly to the decision-making body; it is one form of the right to petition for redress of grievances, which holds such an important place in our constitutional history. By granting this right to one set of persons and denying it to another set similarly circumstanced, Illinois has denied the latter the equal protection of the laws.

## III. THE ILLINOIS STATUTORY DEFINITION OF A SLUM AND BLIGHTED AREA, AS INTERPRETED BY THE ILLINOIS SUPREME COURT, IS UNCONSTITUTIONALLY VAGUE.

Appellants first propose to show that the Illinois Supreme Court, by refusing to clarify the terms used in the statutory definition of a slum and blighted area, or to set standards to be used in determining whether or not an area comes within that definition, has left the definition so vague that its application to any particular area is essentially arbitrary. Appellants will then show how this vagueness violates their constitutional rights.

### A. The Vagueness of the Statutory Definition.

Both the Blighted Areas Act and the Consolidation Act, 67½ Ill. Rev. Stat. 1961 §§65(j), 91.103(i), contain the following definition:

> "'Slum and blighted area' means *any area . . . where buildings or improvements*, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or lay-out, or any combination of these factors, *are detrimental to the public safety, health, morals or welfare.*" [emphasis added]

Three main issues concerning this definition were argued below: (1) what standards are to be used in determining whether particular buildings in an area suffer from the listed factors of dilapidation, obsolescence, etc.; (2) how many buildings in an area must suffer from these factors; and (3) what showing must be made of actual detriment to the public safety, health, morals or welfare. No previous case law had clarified any of these points.

As to the first issue, the trial judge indicated that the statutory blight factors (dilapidation, etc.) had no fixed or definite meaning to him (*e.g.*, Abst. 321-323, 338), and each witness at the trial used his own definitions. Appellant's principal witness testified he was applying the Land Clearance Commission's own standards as set down in its Enumerators' Manual (Deft. Ex. 2, R. IV—994, Abst. 414b ff), as well as those of the Chicago Building, Housing, and Zoning Codes. The housing census data offered by appellants contained its own definitions (Abst. 432). The Commission's appraiser witnesses, on the other hand, defined dilapidation, obsolescence, and deleterious land use (the only factors concerning which they testified) in terms of whatever reduced the market value of a building, regardless of whether it was injurious to health,

safety, etc. Naturally enough, the resulting testimony was hopelessly in conflict.

Appellants urged the Illinois Supreme Court to clarify the definition of these terms, and in particular to reject the testimony of the Commission's witnesses on the grounds that they were using definitions which bore no rational relationship to the public safety, health, morals or welfare. Appellants also urged a distinction be made between trivial and major deviations from standards; they urged, for instance, that where a 3-apartment building fell short of Code standards by lack of a single wash basin, installable for $150 (Abst. 135-136), it was unreasonable to class the building as blighted because lacking sanitary facilities.

By failing to discuss this issue at all in its opinion, the Illinois Supreme Court left the statutory blight factors without any authoritative definition, and inferentially sanctioned the use of standards unrelated to the public safety, health, morals or welfare—the traditional touchstones of the police power.

As to the second issue, the statutory definition gives no indication how many buildings in an area must suffer from the listed blight factors in order for the area as a whole to qualify as slum and blighted. Appellants urged the Illinois Supreme Court to read the word "predominantly" into the statute; they pointed out that, if this was not done, the statute could be read as permitting a large area containing only two or three blighted buildings out of hundreds to be condemned, and argued that this would be unconstitutional.[1] The specific findings of the trial court

[1] Appellants acknowledged that one large blighted building could legitimately outweigh several small non-blighted ones; this was not an issue here, however.

were only that "many" buildings in Roosevelt-Blue Island were dilapidated, and that "there are present" buildings exhibiting one or more of the other statutory factors. Appellants pointed out that even "many" buildings, in an area such as this containing several hundred buildings, need not be a substantial percentage of the total. The Illinois Supreme Court, however, rejected appellant's interpretation of the statute, and refused to set any quantitative standards whatever.

On the third issue, appellants urged, and the trial court agreed, that it should be open to them to produce evidence (which they did) that the public safety, health, morals or welfare were not in fact being injured by conditions in the Roosevelt-Blue Island Tract, and that the Commission would then have the burden of proving such injury. On appeal, appellants contended that the Commission had wholly failed to meet this burden. The Illinois Supreme Court, however, held that the Commission need not produce any such evidence; it held that the connection between physical blight and social detriment was a matter of judicial notice. This, of course, only served to emphasize the lack of standards for judging physical blight.

Then, as if to emphasize further the vagueness of the statutory definition, the court proceeded to set down a few criteria of its own: age of the buildings (which all the witnesses agreed was not necessarily an indication of blight), lack of central heating (not required by the Chicago Building Code), lack of sanitary facilities (which the undisputed evidence showed applied to only a small percentage of units). Anyway, the court said, you can

tell from the photographs[1] (which in fact show nothing concerning interiors, and only superficial details concerning exteriors).

Thus the net result of the Illinois Supreme Court's operations on the statutory definition are that no standards are defined for determining whether a particular building is blighted; no particular number of blighted buildings is required to make the area blighted; and no showing of actual injury to the public welfare is required.

**B. Why This Vagueness Deprives Appellants of Due Process.**

It has long been held that the Fourteenth Amendment requires that any taking of private property without the consent of the owner be for a public use. *Cincinnati* v. *Vester*, 281 U.S. 439 (1930). Moreover, the existence of such a public use—unlike the wisdom or expediency of the taking—is a question for judicial cognizance, even though great weight is given to a legislative declaration as to what constitutes a public use. *United States ex rel. T.V.A.* v. *Welch*, 327 U.S. 546, 557 (concurring opinion of Mr. Justice Frankfurter).

In urban renewal, the public use or public purpose which justifies the taking of private property lies in the removal of a socially detrimental condition of slum and blight. *Berman* v. *Parker*, 348 U.S. 26 (1953); *Zurn* v.

[1] The court's statement that photographs in the record depict more than half the buildings in the area appellants do not believe to be correct. This assertion was first made by appellee at a time when appellants had no access to the record to check it. Appellants do know that the photographs in appellee's Additional Abstract are a highly biased selection, which overlap extensively, and two-thirds of which were taken in one corner of the area.

*City of Chicago*, 389 Ill. 114, 59 N.E.2d 18 (1945). The existence of slum and blight in a particular area sought to be condemned, therefore, is a jurisdictional fact upon which the power of the urban renewal agency to condemn depends.[1] When that fact is challenged, the courts—ultimately this Court, when the Fourteenth Amendment is invoked—must decide.

The Illinois courts do not deny this judicial responsibility, although they differ with appellants (*supra*, part I) as to when and how it shoud be discharged; here, in fact, the issue of slum and blight was heard and ruled on by the courts.

But denial of a hearing is not the only way in which the protection of the Fourteenth Amendment can be lost. Due process is equally denied if the issue to be judicially determined is framed in such vague and ill-defined terms as to make rational decision impossible and any result essentially arbitrary. Here, the existence of the basic jurisdictional fact can rationally be determined by a court only if the term "slum and blighted area" has some reasonably ascertainable meaning. Different states may define the term differently, but in any given state it must be defined with sufficient clarity so that there can be an operational way of determining, other than by pure arbitrary fiat, whether or not a given area falls within the definition.

Moreover, this Court pointed out in *Berman* v. *Parker*, 348 U.S. 26 (1953) that the taking of property for an

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[1] It is, of course, completely immaterial that the use to which the three tracts here at issue are to be put, as a state university campus, would in itself be a completely legitimate public use. The University and the City have voluntarily chosen to proceed by a route which makes the existence of slum and blight the critical issue.

urban renewal project is an exercise of the police power. Unlike virtually any other exercise of the power of eminent domain, such a taking involves passing judgment on the present owners, collectively if not individually, to the effect that they have been so using and maintaining their property that it has become a menace to the public safety, health, morals and welfare. It is this judgment, indeed, which justifies depriving these owners of their property and turning it over to others (usually private parties) for redevelopment.

Now, if Illinois proposes to deprive owners of their property because they are misusing it, it is under an obligation to define with reasonable clarity what form and degree of misuse will bring on this drastic action. In other words, the definition of a "slum and blighted area" should be sufficiently clear so that the property owners of an area can know what action they can collectively take to prevent their area from being so classified. (While an individual owner cannot avoid having his property taken simply by keeping it in sound condition, *Berman* v. *Parker*, *supra*, there is no reason why the property owners of an area collectively should not be able to do so.)

But this is precisely what the Illinois Supreme Court by its refusal to set standards makes impossible. The owner of an individual building cannot be sure it will not be classified as blighted even if he complies with every requirement of the Chicago Building, Housing and Zoning Codes, nor can he with confidence rely on the standards set in the Land Clearance Commission's own manual. Even if the great majority of owners have kept up their properties, they cannot be sure that a few decayed buildings will not result in the whole area's being condemned. Nor can they rely on the fact their area shows

no excessive incidence of crime, delinquency, disease, broken homes, or tax foreclosures.

There is no way, in short, that the people of an area can protect themselves against a slum and blighted designation. The urban renewal agency is given carte blanche to apply its own free-floating notions of the public interest, unrestrained by any legislatively or judicially fixed standards. The only control is that the condemnation court, equally without qualitative or quantitative standards, and uninformed by any particular expertise in the field, may choose to disagree with the agency determination. As left by the Illinois Supreme Court, the statutory definition can be applied with equal facility to the worst slums and to areas which no one could rationally claim were a menace to the public welfare.

Appellants submit that this case falls under the rubric of those numerous cases in which this Court has held that a statute or ordinance cannot be enforced because, as interpreted by the state courts, it is unconstitutionally vague. *Cramp* v. *Board of Public Instruction*, 368 U.S. 278 (1961); *Winters* v. *New York*, 333 U.S. 507 (1948); *Smith* v. *Cahoon*, 283 U.S. 553 (1931); *Connally* v. *General Construction Co.*, 269 U.S. 385 (1926). While the cases in this field mostly involve penal sanctions, the void-for-vagueness doctrine is not confined to the criminal or penal field. *A. B. Small Co.* v. *American Sugar Refining Co.*, 267 U.S. 233 (1925). If the basic statute or ordinance is unconstitutionally vague, it is no defense that it is not self-enforcing but must be applied to individual cases by an administrative or legislative body. *Staub* v. *City of Baxley*, 355 U.S. 313 (1958); *Joseph Burstyn, Inc.* v. *Wilson*, 343 U.S. 495 (1952); *Lovell* v. *Griffin*, 303 U.S. 444 (1938).

The thesis has been advanced that the true function of the void-for-vagueness doctrine is to create a buffer zone for the protection of individual liberties, and also as a means of preserving the institution of federal protection of individual rights. Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. of Pa. L. Rev. 67, 75, 81 (1960). The author makes the point that the failure of a statute to set reasonably clear and ascertainable standards places too great a strain on the institution of judicial review, and in particular review by this Court, as a protection of individual constitutional rights. Unless the public use test of *Cincinnati* v. *Vester* and innumerable other cases is to be abandoned altogether, this rationale is plainly applicable here.

For the foregoing reasons, appellants submit that, in the absence of reasonably ascertainable standards fixed by the Supreme Court of Illinois, this Court should declare the Illinois statutory definition of a slum and blighted area too vague to be constitutionally applied.

## IV. THE ILLINOIS URBAN RENEWAL STATUTES, AS INTERPRETED AND HERE APPLIED BY THE ILLINOIS SUPREME COURT, CONFLICT WITH THE FEDERAL HOUSING ACT AND THE SUPREMACY CLAUSE.

Although appellants in their traverses circumstantially and categorically alleged that various provisions of the federal Housing Act and regulations thereunder had not been complied with, and although it is unquestioned that the present projects are the subject of federal loan-and-grant contracts, the Illinois Supreme Court held that these condemnation actions could proceed without inquiry into the truth of appellants' charges. Nor is this a matter of procedure, since there is not the faintest intimation that the Illinois courts would enforce the federal

act in any other form of action.[1] Thus there arises a repugnancy, so appellants insist, between the federal act and the action of the Illinois courts pursuant to the state urban renewal statutes—or, what would appear to be the same thing, between the federal act and the state statutes as interpreted by the Illinois Supreme Court. It would appear, therefore, that this issue may properly be brought to this Court by appeal, rather than by certiorari. *Mercantile National Bank at Dallas* v. *Langdeau*, 83 S.Ct. (Adv.) 520 (Jan. 21, 1963).

The provisions of the Housing Act which were violated, the manner in which they were violated, and the standing of property owners and residents in the affected areas to assert these violations, are all discussed in greater detail in the Petition for Certiorari in No. 861 (pp. 8-10, 14-21), and the relevant parts of the Act are there reprinted (Appendices, p. 39a). It is there demonstrated that the provisions of the Housing Act in question were enacted for the protection of just such persons as these appellants; that the challenged projects affect them directly and uniquely, and not at all in common with the public at large; and that their legal rights are being invaded by the local agency's actions in violation of the federal statute. Thus appellants come within the rules of standing announced in *Frothingham* v. *Mellon*, 262 U.S. 447, 488 (1923); *Alabama Power Co.* v. *Ickes*, 302 U.S. 464 (1938); *Tennessee Electric Power Co.* v. *TVA*, 306 U.S. 118, 137 (1939); and *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113 (1940).

Here, appellants' standing to raise these issues is even stronger, since the peculiar limitations of original federal jurisdiction are not relevant, and also since appellants

[1] Of course it is well established that state courts must enforce federal statutes. Testa v. Katt, 330 U.S. 386 (1947).

here are using the asserted violations of the Housing Act defensively, rather than offensively. See 3 Davis, *Administrative Law Treatise* § 22.07 (1958). It is elementary that one whose property is being taken by eminent domain must have the right to resist the taking on the grounds that the condemning agency is acting in violation of the law or laws governing its operation, which here would include the Housing Act. A state may regulate the procedure by which such a challenge to the legality of the taking may be made; but Illinois does not purport to provide any procedure other than the traverse, such as appellants utilized here.

It needs only to be pointed out that if the action of the Illinois Supreme Court on this issue is upheld, together with that of the Court of Appeals in the related federal case, the Housing Act provisions in question will become a dead letter as far as appellants are concerned, depite the evident Congressional intention to protect them and others like them.

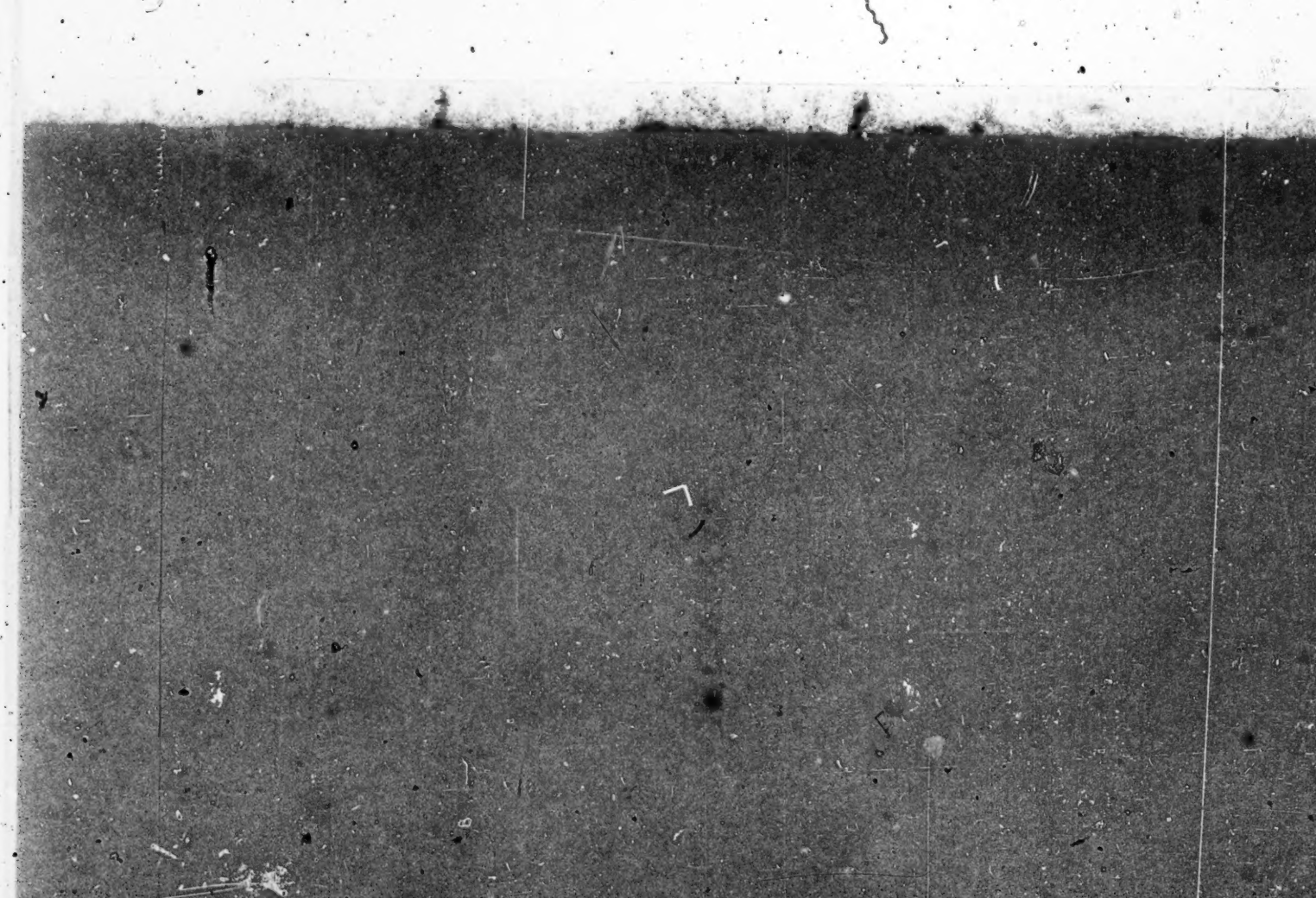
## CONCLUSION.

For the reasons set forth above, appellants submit that this Court has jurisdiction of this appeal, that the issues involved are of great public importance, and that the federal questions presented are substantial, so as to warrant plenary argument.

Respectfully submitted,

FREDERIC D. HOUGHTELING,
GEORGE W. OVERTON,
F. RAYMOND MARKS, JR.,
DONALD PAGE MOORE,
*Attorneys for Appellants.*

# APPENDIX



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# APPENDIX A.

**Opinion of the Illinois Supreme Court, rendered February 26, 1963.**

Docket Nos. 37652 and 37653. Cons.—Agenda 81—January, 1963.

The City of Chicago, Appellee, v. R. Zwick Co. *et al.*—(Guillermo Gonzales *et al.*, Appellants.)

Mr. JUSTICE HOUSE delivered the opinion of the court:

The Chicago Land Clearance Commission filed separate eminent domain actions to acquire land in two of three areas on the near west side of Chicago, which it had declared slum and blighted areas. The Commission was thereafter dissolved and its functions are now exercised by the Urban Renewal Department of the city of Chicago under the Urban Renewal Consolidation Act. (Ill. Rev. Stat. 1961, chap. 67½, pars. 91.101—91.136.) The city of Chicago has been substituted as plaintiff, and the causes are consolidated for this appeal.

The Harrison-Halsted tract was designated as a slum and blighted area in 1956. Most of it was cleared and plans made for its redevelopment as a residential area. Early in 1961 an agreement was reached with the trustees of the University of Illinois for the university's Chicago campus to be located upon the Harrison-Halsted and adjacent tracts. The Land Clearance Commission thereafter adopted resolutions designating the Roosevelt-Blue Island and Congress-Racine tracts as slum and blighted areas. These designations received the approval of the Plan Commission, the city council and the State Housing Board.

Traverses were filed on various grounds. Evidence was heard on the factual issue of whether the Roosevelt-Blue Island tract was a slum and blighted area. The trial court found in the affirmative, and overruled the traverses as matters of law on all other points. Thereafter the issues of just compensation were tried, judgments were entered upon the verdicts and the city deposited the amounts of the judgments with the county treasurer. No question is raised in this appeal as to the sufficiency of the awards.

The essence of defendents' first constitutional objection is that failure to give them a full hearing before the designation of an area as slum and blighted, and an immediate separate review prior to an eminent domain proceeding, was a violation of due process. It is argued that the determination of necessity in the case of a highway department, school or other governmental unit is merely incidental to its function, while the Commission (now Department of Urban Renewal) was created for the primary purpose of designating and condemning slum and blighted areas. It is said that the act of designating an area as slum and blighted long in advance of the exercise of the right of eminent domain adversely affects the liquidity and market value of the property. The conclusion is then drawn that since a hearing on an alleged wrongful designation after the event cannot provide an adequate remedy, an inquiry into the entire background of the factual determination should be permitted in advance of eminent domain proceedings.

The second constitutional argument is that failure to grant a hearing before condemnation proceedings are filed denies defendants equal protection of the laws. This is predicated upon the difference in the act (and its predecessors) in the manner of designating conservation and slum areas relative to hearings. It is argued that when

property is to be taken for a conservation project, every property owner "shall" have the opportunity to be heard before condemnation proceedings may be instituted (pars. 91.120 and 91.121), but that where the area is designated slum and blighted the Department "may" hold public hearings. (Par. 91.109.) We are here dealing with a slum and blighted area, not a conservation area, and the issue of a prior right to a hearing before designation of an area as a conservation area is not before us. Nor does the difference in the two designations warrant a holding that equal protection is denied under certain of our previous decisions hereinafter discussed.

The hearings contemplated by the several acts are legislative in nature, not trial or adversary as contended. The legislative determination that an area is slum and blighted is not an adjudication of legal rights, nor does it constitute the taking of property. The cases of *Zurn* v. *City of Chicago*, 389 Ill. 114, and *Ross* v. *Chicago Land Clearance Com.* 413 Ill. 377, recognized that a property owner may be heard in the condemnation proceeding on the question of whether all conditions precedent to the exercise of eminent domain have been met, and that due process is thereby satisfied.

Defendants frankly admit that if the doctrine of the *Zurn* and *Ross* cases is followed, their appeal with respect to procedures prior to the filing of condemnation actions will be of little avail. They earnestly request that we overrule those cases, since they govern if not overruled. After a careful review of the *Zurn* and *Ross* cases, together with cases subsequently decided in this field, (see *e.g. Chicago Housing Authority* v. *Lamar*, 21 Ill. 2d 362,) we are of the opinion that they are correct and they will not be disturbed.

Defendants do not question the power to eliminate slums through exercise of the right of eminent domain, nor do they claim that slum clearance is not a public use. This would seem to leave only the questions of whether areas so designated were in fact slum and blighted, and the right of the judiciary to review the slum and blighted designation by the public authorities. Nevertheless, a number of extraneous issues are raised in defendants' 196-page brief. Examples follow.

Many of the arguments are based upon defendants' claim of right to review redevelopment of the area, and defendants seek to question the motives of the authorities in designating the areas as slums. It has been recognized that the purpose for which the power of eminent domain is exercised may be questioned, but in the absence of a clear abuse of the power, the motives that prompt the taking are not the subject of judicial investigation. (*Tedens* v. *Sanitary Dist.*, 149 Ill. 87; *City of Chicago* v. *Vaccarro*, 408 Ill. 587; *Deerfield Park Dist.* v. *Progress Development Corp.*, 22 Ill. 2d 132.) We find no such abuse in this record as would justify an inquiry into motives.

That the public purpose of acquiring land in a slum clearance area is for the clearance of the slum has been recognized many times by this court, and is conceded by defendants. Land clearance satisfies public use, so that the type of redevelopment of a slum area has no relevance in a condemnation proceeding. This case is similar to *Chicago Land Clearance Com.* v. *White*, 411 Ill. 310. There, a contract for resale of the slum area had been entered into with the New York Life Insurance Company for its private use, while here the contemplated resale is to the University of Illinois for a Chicago campus. In each case the purpose was to clear a slum area, and consequently inquiry into redevelopment was properly refused.

Defendants attempt to inject noncompliance with the Federal Housing Act of 1949 (42 U.S.C., secs. 1441-1462) into this eminent domain proceeding, because the project is being financed in part by Federal subsidy and the terms of the subsidy contract have not been met. A condemnee has no legal interest in the source of a condemnor's funds. (*Chicago Burlington and Quincy R.R. Co.* v. *City of Naperville,* 169 Ill. 25; *City of Chicago* v. *Sanitary Dist.,* 272 Ill. 37.) Defendants say that they are not proceeding on that theory, but under a claim that they are third party beneficiaries of the contract between the United States Government and the Chicago Land Clearance Commission, and that they are entitled to be heard in the State courts on the question, since the public agency is violating the law in its operations. A number of persons, including most of these defendants, made similar contentions in the Federal District Court for the Northern District of Illinois shortly after these actions were filed. The complaint was dismissed and the Court of Appeals affirmed. (*Harrison-Halsted Community Group, Inc.* v. *Housing & Home Finance Agency,* (7th cir.) 310 F.2d 99.) While the suit was dismissed for want of a substantial Federal question, the court went on to say that the act did not confer any legal rights upon owners and residents in a slum clearance area, "separate from their positions as members of the general public". That view seems eminently correct, and it is adopted as the view of this court. Furthermore, the question sought to be raised is not a proper issue in a condemnation action.

We now turn to the question of whether the Roosevelt-Blue Island tract was in fact a slum and blighted area. Section 3(j) of the Blighted Areas Redevelopment Act, (Ill. Rev. Stat. 1961, chap. 67½, par. 65(j),) and section 3(i) of the Urban Renewal Consolidation Act

(Ill. Rev. Stat. 1961, chap. 67½, par. 91.103(i),) contain the following identical definitions: " 'Slum and Blighted Area' means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout, or any combination of these factors, are detrimental to the public safety, health, morals or welfare." The trial court heard extensive evidence and affirmatively found the tract to be slum and blighted as of the date of its designation as such.

No useful purpose will be served by detailing the testimony of the witnesses. It is sufficient to say that the evidence amply substantiates the finding of slum and blight. A great many structures suffered from dilapidation, obsolescence and other factors to be considered under the statute. Their average age is 75 years, stove heat is predominant and many lack sanitary facilities. Photographs showing more than one half of the buildings are vivid portrayals of property which is readily recognizable as dilapidated and obsolete. Defendants want the quantum of elements spelled out which must be present to justify the conclusion that an area is slum and blighted. They criticize the trial court for using the word "many" and the phrase "there are present" in connection with structures within the tract in his preliminary findings as being too indefinite. Apparently, they would have the judiciary fix percentage standards or formulae. This we have consistently refused to do. "Specific degrees of deterioration or dilapidation, precise percentages of obsolescence, or mathematical measurements of the extent of overcrowding of residences and of schools and other community facilities

which indicate imminent deterioration cannot be stated, for the combinations which will produce the condition at which the legislation is aimed are highly variable." *People ex rel. Gutknecht* v. *City of Chicago*, 3 Ill. 2d 539, 548. See also *Department of Public Works and Bldgs.* v. *Lantner*, 413 Ill. 581; *Zisook* v. *Maryland-Drexel Neighborhood Redevelopment Corp.*, 3 Ill. 2d 570.

It is asserted that a necessary part of plaintiff's case is not only proof of the existence of the statutory factors (dilapidation, obsolescence and the like), but it must also prove that the public health, safety, morals and welfare have been detrimentally affected thereby. The legislature has specifically declared that the presence of factors enumerated in the statute adversely affect the public health and welfare. As with the "chicken and the egg", we may be uncertain which came first, but we have recognized that slum and blight walk hand in hand with juvenile delinquency, spread of contagious diseases, crime and immorality. (*People ex rel. Tuohy* v. *Chicago*, 394 Ill. 477; *Cremer* v. *Peoria Housing Authority*, 399 Ill. 579.) We are of the opinion that judicial notice may be taken that a slum and blighted area detrimentally affects the public health and welfare.

Defendants complain of certain rulings of the trial court on the admission and exclusion of evidence. For example, they criticize the trial court for allowing proof of slum and blight only as to the Roosevelt-Blue Island tract, despite the fact that they did not contest that designation for the Harrison-Halsted tract, and neither of the properties involved in this condemnation action are located in the Congress-Racine tract. The court properly ruled that the condition of the latter tract had no relevance to the question of whether the other tracts were slum areas. The only connection is the redevelopment,

and we have hereinabove held that redevelopment plans are not an issue. We find no error in the other rulings of the trial court.

The trial court's finding that the Roosevelt-Blue Island tract was slum and blighted was not contrary to the manifest weight of the evidence, and was amply supported by the record. No substantial error was committed, and the judgments of the circuit court of Cook County are affirmed.

*Judgments affirmed.*

## APPENDIX B.

**Orders of affirmance by the Illinois Supreme Court, entered February 26, 1963 (identical order in each of the two cases).**

(Captions and Clerk's Certificates omitted.)

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Circuit Court of Cook County aforesaid, Be Affirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellants costs by it in this behalf expended, to be taxed, and that it have execution therefor.

## APPENDIX C.

**Order of the Circuit Court of Cook County, embodying findings and conclusions with respect to the Roosevelt-Blue Island Tract, entered July 26, 1962.**

(Caption omitted.)

ORDER

This cause coming on to be heard on the Traverses and Motions to Dismiss heretofore filed herein by certain defendants in the above entitled causes, and the sole question before this Court being whether or not the Roosevelt-Blue Island area is in fact a slum or blighted area, and the Court having considered the evidence, both oral and documentary, in accordance with the previous ruling of the Honorable Charles S. Dougherty in the above entitled causes, and the Court being advised in the premises,

1. The Court finds that the area involved in this litigation, is the Roosevelt-Blue Island tract which was designated as slum and blighted pursuant to Chicago Land Clearance Commission Resolution No. 61-CLCC-67 dated March 29, 1961. All the parcels in Cases Nos. 62 C 5937 and 62 C 5994 are contained within the area of said designation.

2. The hearing before this Court and its findings concern the status of the Roosevelt-Blue Island area at the time of its designation as slum and blighted by the Chicago Land Clearance Commission.

3. The Court rules that the petitioner herein has the burden of proof as to such determination.

4. With regard to the Roosevelt-Blue Island tract, the Court finds, from the preponderance of the evidence, that many of the structures existing in this tract as of the date of its designation by the Chicago Land Clearance Commission were dilapidated within the meaning of the Illinois Blighted Areas Redevelopment Act.

5. As to the Roosevelt-Blue Island Tract, the Court finds, from the preponderance of the evidence, that there are present structures which contain the physical features defining a slum and blighted area within the meaning of the Illinois Blighted Areas Redevelopment Act, to-wit: obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout, or a combination of these factors.

6. The Court rules that under the Illinois Blighted Areas Redevelopment Act the physical factors enumerated in paragraphs 4 and 5 above must be detrimental to the public health, safety, morals, and welfare before the area can be designated as slum and blighted.

7. From the preponderance of the evidence the Court finds that the physical factors found to exist in the Roosevelt-Blue Island tract above were detrimental to the public health, safety, morals, and welfare, as of the date of designation of said tract as slum and blighted.

8. Accordingly, the Court finds that the Roosevelt-Blue Island tract was, as of the date of its designation by the Chicago Land Clearance Commission, a slum and blighted area.

It Is, Therefore, Ordered that the Traverses and Motions to Dismiss heretofore filed in the above entitled causes, with respect to the issues involved in the hearing before this Court, be and the same are hereby overruled and denied.

Enter:

/s/ Ezra J. Clerk
Judge

Dated: July 26, 1962.

## APPENDIX D.

**Order of the Circuit Court of Cook County overruling Amended and Second Amended Traverses and Motions to Dismiss, entered July 31, 1962.**

### ORDER OVERRULING TRAVERSES

This cause coming on for hearing on the Amended Traverses and Motions to Dismiss and the Second Amended Traverses and Motions to Dismiss heretofore filed by defendants Mildred Senese and Anthony Fiore (Parcel 16-319); Effie Theros (Parcel 25-260); Rudolph M. Esparza (Parcel 25-262); Peter Bustamante (Parcel 25-266); Cosmos Pharmacy, Inc. d/b/a Atlas Pharmacy (Parcel 25-270); and Guillermo and Margarito Gonzalez (Parcel 26-278); and on the oral motion of said defendants for leave to take discovery of Petitioner herein and of various other governmental agencies and officers with respect to the issues raised by various of the grounds alleged in said Amended Traverses and Motions to Dismiss; and the Petitioner herein having moved to amend its Petitions by substituting City Of Chicago as Petitioner pursuant to the Urban Renewal Consolidation Act; and the above named defendants having filed Second Amended Traverses and Motions to Dismiss with regard to the said Petitions;

And the Court having heard argument by counsel for said defendants and counsel for petitioner, and being of the opinion that the grounds alleged in said Amended Traverses and Motions to Dismiss and said Second Amended Traverses and Motions to Dismiss, with the exceptions hereinafter specified, are insufficient as a matter of law as grounds for traverse to or dismissal of the Petition to Condemn herein; and being further of the opinion that it would be both improper and useless to

allow discovery whose purpose would be to produce evidence in support of the aforesaid grounds which the Court finds to be insufficient as a matter of law;

And this Court having found that the ground alleged in Paragraph 1 of the Amended Traverses and Motions to Dismiss, to-wit, that Petitioner made no bona fide attempt to arrive at an agreement with these defendants as to the fair market value of their several properties, would constitute a legally sufficient ground of traverse; but Petitioner having introduced sufficient evidence to make a prima facie case as to this ground and defendants having introduced no evidence to the contrary;

And this Court having found that so much (but only so much) of the grounds alleged in Paragraph 19 of the Amended Traverses and Motions to Dismiss herein, as alleges that the Roosevelt-Blue Island tract was not, at the time of the designation thereof by the Chicago Land Clearance Commission, a "slum and blighted area" within the meaning of the Illinois Blighted Areas Redevelopment Act, would constitute a legally sufficient ground of traverse;

And this Court being, however, of the opinion that the records of Petitioner relating to its investigation, if any, of the Roosevelt-Blue Island tract, and the testimony of its officers and employees as to the manner in which such investigation, if any, was conducted, would not be relevant, competent, or material as evidence as to the issue stated in the preceding paragraph, which is the sole remaining factual issue for determination by the Court;

And the parties having consented, in the absence of this Court, to the hearing of evidence bearing on the aforesaid sole remaining issue by the Honorable Ezra J. Clark, sitting in this Court's place and stead pursuant to

law and the rules of this Court; and said Judge having heard and considered the evidence presented by defendants and by Petitioner, and the arguments of counsel, and having found the issue of fact so presented in favor of Petitioner; and this Court now adopting said finding as its own;

In their Second Amended Traverses and Motions to Dismiss the defendants have contended that they were deprived at the aforesaid hearing before the Honorable Ezra J. Clark of an opportunity to call witnesses who, if the Petitions were instituted by City Of Chicago, would be adverse witnesses pursuant to Section 60 of the Civil Practice Act, and that substitution of City Of Chicago as Petitioner herein after such hearing has denied them a full and fair hearing, and the Court being of the opinion that said contention is without substance;

And the parties having entered into a certain Stipulation of Facts bearing on the issues raised by certain portions of the Amended Traverses and Motions to Dismiss other than Paragraphs 1 and 19 thereof, but this Court not having considered the facts so stipulated because of the Court's conclusion hereinbefore set forth as to the legal insufficiency of said portions of the Amended Traverses and Motions to Dismiss;

It Is Hereby Ordered, Adjudged, And Decreed, as follows:

1. This Court finds on the basis of the evidence presented that Petitioner did in fact, prior to the filing of the Petition to Condemn herein, make a bona fide attempt to arrive at an agreement with the owners of the parcels here in question as to the fair market value of said parcels, and therefore overrules the Amended Traverses and Motions to Dismiss and the Second Amended Traverses and Motions to Dismiss as to this ground therein alleged.

2. This Court finds on the basis of the evidence presented that the Roosevelt-Blue Island tract was, at the time of the designation thereof by the Chicago Land Clearance Commission, a "slum and blighted area" within the meaning of the Illinois Blighted Areas Redevelopment Act, and therefore overrules the Amended Traverses and Motions to Dismiss and the Second Amended Traverses and Motions to Dismiss as to this ground therein alleged.

3. The Court finds that the defendants herein were offered a full and fair hearing with regard to the issues stated in paragraph 2 above and such hearing was full, adequate and fair without regard to the identity of the Petitioner.

4. This Court finds that each and every other ground alleged in the Amended Traverses and Motions to Dismiss and the Second Amended Traverses and Motions to Dismiss is insufficient as a matter of law, and therefore overrules said Amended Traverses and Motions to Dismiss and said Second Amended Traverses and Motions to Dismiss as to each and every such ground as a matter of law.

5. For the reasons set forth, the motion of defendants for leave to take discovery of Petitioner and of other governmental agencies and officers with respect to any and all issues is hereby denied.

6. This Court finds that the Urban Renewal Consolidation Act of 1961 (Ill. Rev. Stat. 1961, Chapter 67½, Section 91.101-91.136) is Constitutional under the Illinois and Federal constitutions.

Enter:

/s/ Charles S. Dougherty
Judge

Dated: July 31, 1962

## APPENDIX E.

**Illinois Blighted Areas Redevelopment Act of 1947, 67½ Ill. Rev. Stat. 1961 §§ 63-91, Laws 1947, p. 1072, as amended (excerpts)**

**§ 64. Legislative finding and declaration**

It is hereby found and declared (a) that there exist in many urban communities within this State slum and blighted areas, as defined herein; (b) that such slum and blighted areas, contribute to the development and cause an increase in and spread of disease, crime, infant mortality and juvenile delinquency, and constitute a menace to the health, safety, morals and welfare of the residents of the State; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities and constitute a drain upon the public revenue and continue to impair the efficient, economical and indispensable governmental functions of the municipalities embracing such areas, as well as of the State; and (c) that in order to promote and protect the health, safety, morals and welfare of the public it is necessary to provide for the eradication and elimination of slum and blighted areas and the construction of redevelopment projects thereon, and that the eradication and elimination of such areas and the construction of redevelopment projects financed by private capital, with limited financial assistance from governmental bodies, in the manner provided in this Act are hereby declared to be a public use essential to the public interest.

* * *

It is also found and declared (a) that the development and redevelopment of urban communities is best served by making such slum and blighted areas and blighted vacant areas available for redevelopment for any use for which the land is suited, public or private, by bodies and corporate, public corporations, or other public bodies, or any private interests, and (b) the eradication and elimination of slum and blighted areas and the acquisition of blighted vacant areas and the development or redevelopment thereof by public bodies or private interests for any appropriate use, public or private, consistent with the general plan for the municipality, in the manner provided in this Act, is hereby declared to be a public use essential to the public interest. As amended 1961, Aug. 22, Laws 1961, p. 3800, § 1.

**§ 65. Definitions.**

* * *

(j) "Slum and Blighted Area" means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals or welfare.

**§ 73. Commission to be municipal corporation—Powers**

A Commission shall be a municipal corporation and shall constitute a body both corporate and politic, exercising public and essential government functions, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act.[1] It may

[1] Section 63 et seq. of this chapter.

sue and be sued, and have a seal and alter the same at pleasure, have perpetual succession, make and execute contracts, deeds and other instruments necessary or convenient to the exercise of its powers, and make and from time to time amend and repeal by-laws, rules and regulations not inconsistent with this Act. In addition it shall have the following powers:

(a) To acquire slum and blighted areas and other areas which may constitute a redevelopment project as provided in this Act;

(b) To clear any such areas so acquired by demolition or removal of existing buildings and structures thereon; and to install, repair, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites for use in accordance with a redevelopment plan;

(c) To convey real property so acquired for use in accordance with a redevelopment plan;

(d) To borrow money, to apply for and accept advances, loans, grants, contributions, gifts, services, or other financial assistance, from the United States of America or any agency or instrumentality thereof, the State, County, Municipality or other public body or from any sources, public or private, for or in aid of any of the purposes of this Act, and to secure the payment of any loans or advances by the issuance of bonds (as hereinafter defined), and by the pledge of any loan, grant, or contribution, or parts thereof, or the contracts therefor, to be received from the United States of America or any agency or instrumentality thereof, and to enter into and carry out contracts in connection therewith; to redeem its bonds at the redemption price established therein or to

purchase them at less than the redemption price, all bonds so redeemed or purchased to be cancelled; provided that in no event shall any bonds issued by the Commission be payable except out of the revenues or funds specifically designated in this Act for such payment. Notwithstanding any other provision of this Act a Commission shall not borrow money from any source other than the United States of America or any agency or instrumentality thereof without obtaining approval of the State Housing Board and the governing body of the municipality. A Commission, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the United States of America or any agency or instrumentality thereof for a redevelopment project, such conditions imposed pursuant to Federal law as the Commission may deem reasonable and appropriate and which are not inconsistent with the purposes of this Act or with the foregoing proviso; and

(c) To accomplish a combination of the foregoing to carry out a redevelopment plan.

In relation to the foregoing powers a Commission may investigate into living and housing conditions in its area of operation to determine the extent and location of slum and blighted areas and other areas which may constitute a redevelopment project as defined herein and to ascertain in which of such area or areas development or redevelopment should be undertaken, and in connection with any such investigation may conduct public hearings, take testimony and proof under oath on the subject matter of such investigation, and cooperate with the planning agency

of the municipality wholly or partially within its area of operation.

The Commission shall have power to make studies, surveys and plans preliminary to or concerning any projects which are permissible under this Act.

A Land Clearance Commission shall not be limited to one development or redevelopment project, but may have as many projects in process at any one time as it may deem necessary to accomplish the purposes of this Act.

A Commission shall have no power to build or operate housing on any real property acquired pursuant to this Act, other than to manage, operate and maintain existing housing or other buildings and improvements located thereon at the time of acquisition pending the demolition and removal of such buildings or improvements or the sale of any such buildings or improvements the demolition or removal of which is not deemed necessary to the redevelopment plan, and to use the rents and income to pay any expense in connection therewith. 1947, July 2, Laws 1947, p. 1072, § 11; 1949, Aug. 3, Laws 1949, p. 997, § 1; 1955, July 13, Laws 1955, p. 1776, § 1.

**§ 74. Public hearings by Commission—Compelling production of evidence—Records of municipality**

In making investigations herein authorized the Commission may hold public hearings. Any hearing may be conducted by the Commission or by a committee appointed by it, consisting of one or more members of the Commission, or by an employee or agent specially authorized by the Commission to conduct it. The Commission and any member, employee or agent thereof so designated shall have power to administer oaths, take affidavits, subpoena and require the attendance and testimony of witnesses and the

production of books and papers pertaining to such investigation.

In case of contumacy or refusal to obey a subpoena issued to any person, the Circuit or Superior Court of the county in which such person resides or has his principal place of business, upon application by the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or before any member, employee or agent thereof designated to conduct such hearing there to produce evidence, if so desired, or there to give testimony touching the matter under investigation and any failure to obey such order of the Court may be punished by said Court as a contempt thereof.

The officials of any city, village or town and the members of any zoning commission shall, when requested so to do by any member of the Commission, make available for inspection by the Commission or by any committee, employee or agent of the Commission, any and all records and data which they may have pertaining to an area which is then being investigated. 1947 July 2, Laws 1947, p. 1072, § 12.

### § 75. Determination that particular blighted area should be acquired—Approval by State Housing Board and governing body

Whenever a Commission determines that a particular slum or blighted area, or any other area which may constitute a redevelopment project, as herein defined, should be acquired pursuant to the provisions of this Act,[1] such determination together with an accurate description of the

[1] Sections 63-91 of this chapter.

area included in such determination and the date on which the determination was made shall be immediately set forth in the records of the Commission. Such determinations by a Commission may be made from time to time and need not all be made at one time. Each such determination shall be evidenced by a resolution adopted by the Land Clearance Commission.

The area of each such determination shall be specifically designated in the resolution as a "Slum and Blighted Area Redevelopment Project" or a "Blighted Vacant Area Redevelopment Project", according to the determination of the Commission; provided, that any determination made prior to the effective date of this amendatory Act and designated as a "redevelopment project" as required by the provisions of this section in force prior to such effective date shall constitute a determination that the project is a "Slum and Blighted Area Redevelopment Project" and shall not require the adoption of a new or amendatory resolution so declaring the area involved in such determination. A certified copy of such resolution shall be delivered to the State Housing Board and to the governing body of the municipality in which the area is situated. No such determination shall be of any force or effect until such time as it has been approved by the State Housing Board and the governing body of the municipality in which the area is situated. 1947, July 2, Laws 1947, p. 1072, § 13; 1949, Aug. 3, Laws 1949, p. 997, § 1.

## APPENDIX F.

**Illinois Urban Community Conservation Act, 67½ Ill. Rev. Stat. 1961 §§ 91.8-91.16, Laws 1953, p. 1240, as amended (excerpts).**

**§ 91.10. Definitions.**

• • •

(d) "Conservation Area" in municipalities with a population of over 500,000 shall mean an area of not less than 40 acres, and in other municipalities shall mean an area of not less than 2 acres in which the structures in 50% or more of the area are residential having an average age of 35 years or more. Such an area is not yet a slum or blighted area as defined in the Blighted Areas Redevelopment Act of 1947, but such an area by reason of dilapidation, obsolescence, deterioration or illegal use of individual structures, overcrowding of structures and community facilities, conversion of residential units into non-residential use, deleterious land use or layout, decline of physical maintenance, lack of community planning, or any combination of these factors may become such a slum and blighted area.

(e) "Conservation Plan" shall mean the comprehensive program for the physical development and replanning of a "Conservation Area" embodying the steps required to prevent such "Conservation Area" from becoming a slum and blighted area.

• • •

**§ 91.11. Powers of Board.**

• • •

The Conservation Board shall designate Conservation Areas and

(a) Approve all conservation plans developed for Conservation Areas in the manner prescribed herein;

(b) Approve each use of eminent domain for the acquisition of real property for the purposes of this Act, provided that every property owner affected by condemnation proceedings shall have the opportunity to be heard by the Board before such proceedings may be approved;

• • •

**§ 91.12 Designation of Conservation Areas—Preparation of Plan — Opinion by Plan Commission — Approval by governing body**

Whenever the Board determines that an area within the municipality may be eligible for designation as a Conservation Area within the meaning of this Act,[1] it shall make such investigation and hold such hearings as may be required, including at least one public hearing held within the area. Any hearing may be conducted by the Board or by a committee appointed by it, consisting of one or more members of the Board. The Board may after such hearing designate such areas as Conservation Areas for the purposes of this Act. Such designation together with an accurate description of the area included in such designation shall be made by resolution of the majority of the Board and be part of the records of the Board.

• • •

## APPENDIX G.

**Illinois Urban Renewal Consolidation Act, 67½ Ill. Rev. Stat. 1961 §§ 91.101-91.136, Laws 1961, p. 3308 (excerpts).**

**§ 91.102 Legislative finding and declaration**

It is hereby found and declared (a) that there exist in urban communities within this State with more than 500,000 inhabitants land clearance commissions, created and acting pursuant to the "Blighted Areas Redevelopment Act of 1947," approved July 2, 1947, as amended, and conservation boards, created and acting pursuant to the "Urban Community Conservation Act," approved July 13, 1953, as amended; (b) that the administration of these two closely related programs involving the eradication or prevention of slum and blight areas and the redevelopment of such areas can be accomplished more efficiently by a single instrumentality as an agency of such urban community; (c) that in order to protect the health, safety, morals and welfare of the public by the more efficient administration of programs to aid in the eradication and prevention of slum and blight areas and the redevelopment thereof it is necessary to provide for the creation of a single instrumentality to absorb the functions of land clearance commissions and conservation boards, and to exercise the powers and authority granted by the "Blighted Areas Redevelopment Act of 1947," approved July 2, 1947, as amended, and the "Urban Community Conservation Act," approved July 13, 1953, as amended; and (d) the eradication and redevelopment of slum and blighted areas, the development and redevelopment of blighted vacant areas, the conservation of urban residential areas and the prevention of slums, by a single instrumentality the creation of which is herein authorized, in

the manner provided in this Act, is hereby declared to be a public use essential to the public interest. 1961, Aug. 15, Laws 1961, p. 3308, § 2.

**§ 91.103 Definitions**

The following terms, wherever used or referred to in this Act shall have the following respective meanings, unless in any case a different meaning clearly appears from the context:

(a) "Department" means a Department of Urban Renewal created pursuant to this Act.

(b) "Government" shall mean the United States of America or any agency or instrumentality thereof authorized to make funds available to local public agencies by way of loans or grants for or in aid of any of the purposes of this Act.

• • •

(i) "Slum and Blighted Area" means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals or welfare.

• • •

(m) "Conservation Area" shall mean an area of not less than 40 acres in which the structures in 50% or more of the area are residential, having an average age of 35 years or more. Such an area is not yet a slum or blighted area as defined herein, but such an area, by reason of dilapidation, obsolescence, deterioration or illegal use of individual structures, overcrowding of structures and com-

munity facilities, conversion of residential units into non-residential use, deleterious land use or layout, decline of physical maintenance, lack of community planning, or any combination of these factors, may become such a slum and blighted area.

(n) "Conservation Plan" shall mean the comprehensive program for the physical development and replanning of a "Conservation Area" embodying the steps required to prevent such "Conservation Area" from becoming a slum and blighted area.

• • •

**Part I. Slum and Blighted Areas.**

**§ 91.109 Powers of department**

The Department of Urban Renewal, as agent of the municipality, shall have and exercise the following powers with respect to redevelopment projects:

(a) To acquire slum and blighted areas and other areas which may constitute a redevelopment project as provided in this Act;

(b) To clear any such areas so acquired by demolition or removal of existing buildings and structures thereon; and to install, repair, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites for use in accordance with a redevelopment plan;

(c) To convey real property so acquired for use in accordance with a redevelopment plan;

(d) To accomplish a combination of the foregoing to carry out a redevelopment plan.

In relation to the foregoing powers the Department may investigate into living and housing conditions in its area of operation to determine the extent and location of slum and blighted areas and other areas which may constitute a redevelopment project as defined herein and to ascertain in which of such area or areas development or redevelopment should be undertaken, and in connection with any such investigation may conduct public hearings, take testimony and proof under oath on the subject matter of such investigation, and cooperate with the planning agency of the municipality wholly or partially within its area of operation.

The Department shall have power to make studies, surveys and plans preliminary to or concerning any projects which are permissible under this Act.

The Department shall not be limited to one development or redevelopment project, but may have as many projects in process at one time as it may deem necessary to accomplish the purposes of this Act.

A Department shall have no power to build or operate housing on any real property acquired under the provisions of Part I of this Act, other than to manage, operate and maintain existing housing or other buildings and improvements located thereon at the time of acquisition pending the demolition and removal of such buildings or improvements or the sale of any such buildings or improvements the demolition or removal of which is not deemed necessary to the redevelopment plan, and to use the rents and income to pay any expense in connection therewith. 1961, Aug. 15, Laws 1961, p. 3308, § 9.

**§ 91.110. Investigations and hearings**

In making investigations herein authorized the Department may hold public hearings. Any hearing may be conducted by the Department or by a committee appointed by it, consisting of one or more members of the Department, or by an employee or agent specially authorized by the Department to conduct it. The Department and any member, employee or agent thereof so designated shall have power to administer oaths, take affidavits, subpoena and require the attendance and testimony of witnesses and the production of books and papers pertaining to such investigation. 1961, Aug. 15, Laws 1961, p. 3308, § 10.

**§ 91.111 Determination that area constitutes redevelopment project—Resolution—Approval**

Whenever the Department determines that a particular slum or blighted area, or any other area which may constitute a redevelopment project, as herein defined, should be acquired pursuant to the provisions of this Act, such determination together with an accurate description of the area included in such determination and the date on which the determination was made shall be immediately set forth in the records of the Department. Such determinations by the Department may be made from time to time and need not all be made at one time. Each such determination shall be evidenced by a resolution adopted by the Department.

The area of each such determination shall be specifically designated in the resolution as a "Slum and Blighted Area Redevelopment Project" or a "Blighted Vacant Area Redevelopment Project," according to the determination of the Department. A certified copy of such resolu-

tion shall be delivered to the governing body of the municipality in which the area is situated. No such determination shall be of any force or effect until such time as it has been approved by the governing body of the municipality in which the area is situated. 1961, Aug. 15, Laws 1961, p. 3308, § 11.

## Part II. Conservation Areas.

### § 91.120 Powers of department

The Department of Urban Renewal as agent of the municipality, shall have and exercise the following powers with respect to the development, redevelopment and replanning of conservation areas:

(a) Designate Conservation Areas and approve all conservation plans developed for conservation areas in the manner prescribed herein.

(b) Approve each use of eminent domain for the acquisition of real property for the purposes of this Act, provided that every property owner affected by condemnation proceedings shall have the opportunity to be heard by the Department before such proceedings may be approved.

• • •

### § 91.121 Designation of conservation areas—Investigation and hearing—Plan—Conservation community council

Whenever the Department determines that an area within the municipality may be eligible for designation as a conservation area within the meaning of this Act, it shall make such investigation and hold such hearings as may be required, including at least one public hearing held within the area. Any hearing may be conducted by the Department or by a committee appointed by it, consisting of one

or more members of the Department. The Department and any member, employee or agent thereof so designated shall have power to administer oaths, take affidavits, subpoena and require the attendance and testimony of witnesses and the production of books and papers pertaining to such investigation. The Department may after such hearing designate such areas as conservation areas for the purposes of this Act. Such designation together with an accurate description of the area included in such designation shall be made by resolution of the majority of the Department and be part of the records of the Department.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962.

**No. 984**

GUILLERMO GONZALEZ, ET AL.,
*Appellants,*

*vs.*

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
*Appellee.*

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

## MOTION OF THE APPELLEE, CITY OF CHICAGO, A MUNICIPAL CORPORATION, TO DISMISS THE APPEAL OF GUILLERMO GONZALEZ, ET AL., APPELLANTS, FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION, AND BRIEF IN SUPPORT OF SAID MOTION.

JOHN C. MELANIPHY,
Corporation Counsel of the City of Chicago,
511 City Hall,
Chicago 2, Illinois,

THOMAS A. FORAN,
Special Assistant Corporation Counsel,

MILTON P. WEBSTER, JR.,
Assistant Corporation Counsel,
*Attorneys for Appellee.*

ALBERT E. JENNER, JR.,
THOMAS A. FORAN,
KEITH F. BODE,
*Of Counsel.*

THE GUNTHROP-WARREN PRINTING COMPANY, CHICAGO 58

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IN THE

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OCTOBER TERM, 1962.

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*Appellee.*

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ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

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## MOTION OF THE APPELLEE, CITY OF CHICAGO, A MUNICIPAL CORPORATION, TO DISMISS THE APPEAL OF GUILLERMO GONZALEZ, ET AL., APPELLANTS, FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION, AND BRIEF IN SUPPORT OF SAID MOTION.

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*To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:*

Appellee, City of Chicago, a municipal corporation, moves to dismiss for want of a substantial federal question the appeal from the judgments of the Supreme Court of Illinois entered on February 26, 1963, which affirmed judgments of

condemnation in favor of appellee, judgments which admittedly awarded just compensation to appellants for the land taken.

Appellee submits this brief in support of its position that the Supreme Court of the United States is without jurisdiction of this appeal and that no substantial federal questions are presented by the Jurisdictional Statement of appellants.

The opinion of the Supreme Court of Illinois from which the appeal is taken has been reported as *City of Chicago* v. *Zwick*, 27 Ill. 2d 128, 188 N. E. 2d 489 (1963).

## QUESTIONS PRESENTED.

I. Did Illinois afford appellants a full and fair hearing in the Circuit Court of Cook County which satisfied the constitutional requirements of due process of law and equal protection of the laws?

II. Does the legislative definition of a "slum and blighted area" contained in the Illinois Blighted Areas Redevelopment Act satisfy constitutional requirements of definiteness?

III. Do the appellants have standing to obtain review of alleged non-compliance by local Illinois agencies with provisions of the Federal Housing Act?

## STATEMENT OF THE CASE.

The appellants' Statement of the Case under the headings "Proceedings Below," "Related Federal Case" and "Facts Alleged in the Traverse" sets forth the chronological order of the various steps involved in this proceeding. Appellants make certain characterizations of the evidence and pleadings which we cannot accept and which will be commented upon in the course of our argument.

Two important omissions occur in appellants' Statement of the Case which should be noted:

First: A legislative type hearing was in fact held before the Planning and Housing Committee of the Chicago City Council on April 13-15, 1961 at which objectors were permitted to and did appear, participate and make statements. It was not until May 22, 1961, which was subsequent to the legislative declaration of the area as slum and blighted, that the Chicago City Council adopted the ordinances approving the redevelopment of the area as a University site.

Second: Testimony taken at the trial in the Circuit Court was confined to the question of whether the Roosevelt-Blue Island area (as distinguished from a combined area consisting of Roosevelt-Blue Island, Congress-Racine and Harrison-Halsted) was a slum and blighted area because (a) it was and still is conceded that the Harrison-Halsted area was a slum and blighted area at the time of its designation as such (A. 122) and (b) none of the parcels of land involved in this cause was located in the Congress-Racine tract.

Under the heading "Condition of the Roosevelt-Blue Island Tract" appellants, though asserting their recognition of the fact that this Court cannot and will not reweigh and resolve conflicts in the testimony and other evidence before the trial court, belie their assertion by proceeding to give a highly selective and biased statement of the evidence presented before the trial court. Suffice it to say that the witnesses for the appellee had examined 330 of the 332 parcels of land in the Roosevelt-Blue Island area and testified that they found one or more or some combination of three (dilapidation, obsolescence and deleterious land use) of the ten statutory factors of slum and blight named in the Illinois Statute in over 90% of the structures involved. The abstract of the transcript of the proceedings

and the many original exhibits, including the photographs, disclose the wealth of evidence presented in the trial court on the issue of slum and blight.

## I.

## The Appellants Were Afforded a Full and Fair Judicial Hearing Which Satisfied the Requirements of Both Due Process of Law and Equal Protection of the Laws.

Appellants' first argument is a contention that Illinois procedure in slum clearance cases denies property owners due process of law. This argument is admittedly identical with that made in the petition for certiorari in the companion Federal case (No. 861). Consequently, the appellee will burden the Court with but a brief restatement of the reasons why the argument is invalid.

First of all, appellants complain that they should have been afforded a trial-type administrative hearing before the Chicago Land Clearance Commission at the time that agency made its preliminary legislative declaration of the area as slum and blighted and its decision to engage in this slum clearance project. Appellants make this complaint although they admit they were afforded a full judicial hearing in the Circuit Court of Cook County on the issue of the "slum and blighted" designation and they admit that they were awarded just compensation for their properties.

The Illinois Supreme Court, as did the United States District Court and Court of Appeals, properly held that due process was afforded appellants in the judicial proceedings in the Circuit Court of Cook County in which they were heard fully on all pertinent issues. The initial decision by the Chicago Land Clearance Commission to undertake slum clearance in a particular area is a legislative

determination as to which no hearing whatever is required. *Bragg* v. *Weaver*, 251 U. S. 57 (1919); *Rindge Co.* v. *County of Los Angeles*, 262 U. S. 700, 709 (1923); *Combs* v. *Illinois State Toll Highway Commission*, 128 F. Supp. 305 (N. D. Ill. 1955), aff'd *per curiam* 349 U. S. 942; *Robinette* v. *Chicago Land Clearance Commission*, 115 F. Supp. 669, 672 (N. D. Ill. 1951), leave to file petition for mandamus denied 342 U. S. 940 (1952).

In effect, appellants argue that an exception to this general rule should be made in slum clearance cases. They argue that the economic effect upon property of a "slum and blighted" designation is so immediately disastrous and the procedural rules applied by Illinois courts in awarding compensation to the owners of that property are so unfair that those owners cannot obtain just compensation for their property when taken.

The record in this case demonstrates the inaccuracy of appellants' speculative contentions and refutes the assertion that the United States Constitution compels a special rule as to hearing rights in slum clearance situations.

In the trial court appellants were afforded the opportunity to challenge the "slum and blighted" designation of the area in question. Appellants were permitted to introduce evidence concerning the physical, economic and social condition of the area. As a matter of fact, the trial court imposed upon appellee as the condemning authority the burden of proving that the area was "slum and blighted." The trial court found that the condemning body had sustained this burden and that the area was in fact "slum and blighted." On appeal, after a detailed review of the evidence, the Illinois Supreme Court affirmed the trial court. Consequently, appellants have had a full hearing on this issue. They were in no way prejudiced by reason of the fact that, under Illinois law, the trial type

hearing which adjudicates the issue of "slum and blight" takes place in the condemnation proceeding rather than at or prior to the preliminary legislative declaration.

Appellants speak generally of injury but state no facts showing that they have been injured. In any event no issue of alleged injury respecting just compensation is presented for it is conceded that appellants were awarded just compensation for their property.

At the present time over 98 per cent of the Harrison-Halsted and Roosevelt-Blue Island areas have been acquired by the condemning body. No appeals are pending in which any claim of inadequacy of compensation is made, and no appeals other than that at bar are pending concerning the "slum and blighted" designation. These facts dispose of appellants' rhetorical slurs about the alleged inadequacy of "just compensation" under Illinois law (Jurisdictional Statement 16, 18) and destroy their argument that special circumstances require different hearing procedures in slum clearance cases.

We have searched in vain through appellants' briefs in this case and in No. 861 for an explanation of the grounds on which appellants expect this Court to treat as substantial their due process arguments which are based upon a theory of inevitable and substantial economic hardship and inadequate compensation in the face of the fact that neither appellants nor any other landowners in the area have taken appeals to complain of the adequacy of the compensation awarded.

Appellants also complain of an alleged failure of the local agencies to engage in a bona fide fact finding procedure concerning the "slum and blighted" status of the area. This argument fails for the same reason as the previous one—because it proceeds on the false premise that the adjudication of the "slum and blighted" character of an

area is made by the Land Clearance Commission. Under Illinois law this determination takes place in the condemnation proceedings. The Chicago Land Clearance Commission makes no finding or determination which affects landowners' legal rights. The legislative procedure used by the Commission in its preliminary designation of an area for slum clearance and subsequent redevelopment is irrelevant.

In any event, the area in question has been judicially determined to be a slum and blighted area. The clearance of the area will accomplish the public purpose—eradication of slum and blight—contemplated by the urban renewal statutes. On this record, appellants' contentions amount at most to an offer to prove that the local slum clearance authorities, though effectuating this public purpose, were also actuated by a second public purpose, viz., a desire to provide a site for a university campus. The Illinois Supreme Court properly held that where the accomplishment of the public purpose of slum clearance appears, a property owner has no right to inquire into additional motives of the condemning body. *Soon Hing* v. *Crowley*, 113 U. S. 703, 710-711 (1885); *Progress Development Corp.* v. *Deerfield Park District*, 22 Ill. 2d 132, 174 N. E. 2d 850 (1961); 26 Ill. 2d 296, 186 N. E. 2d 360 (1962), cert. denied 31 Law Week 3339 (April 15, 1963); *Chicago Land Clearance Commission* v. *White*, 411 Ill. 310, 104 N. E. 2d 236 (1952), cert. den. 344 U. S. 824.

Appellants' contentions that local officials were primarily motivated by a desire to provide a site for a unversity campus and but secondarily by a desire to clear slums amounts to an assertion that an otherwise valid slum clearance project may somehow be converted into something else depending upon the nature of the proposed redevelopment of the slum lands when cleared. This contention has been rejected in a host of decisions. *Berman*

v. *Parker*, 348 U. S. 26 (1953); *Grisanti* v. *City of Cleveland*, 371 U. S. 68 (1962); *Cannata* v. *City of New York*, 371 U. S. 4 (1962). See the more than eighty cases collected in 44 ALR 2d 1414 and the ALR Supplemental Service. Appellants' denial of the relevance of these cases (Reply Brief of Petitioners in No. 861, p. 12) is astounding in the face of their repetition of their "redevelopment" argument.

However, appellants' contentions on this issue are significant because they reveal not only the true nature of their complaints but the patent inconsistency of their position. Appellants do not object to slum clearance and urban renewal activity in these areas. They boast that they have previously encouraged that activity. Despite assertions to the contrary (Reply Brief of Petitioners in No. 861, p. 12), their real complaint is that they prefer redevelopment of the cleared area for residential and commercial rather than university use. This clearly appears from their traverse (to which they attached as part thereof their complaint in the federal court case No. 861) in which they pray that appellee be enjoined from proceeding further other than in accord with the original redevelopment plan, viz., residential and commercial use.

Despite appellants' denials (Reply Brief of Petitioners, No. 861, p. 11), appellants' due process arguments are virtually, if not completely, identical to those made by the appellants in *Grisanti* v. *City of Cleveland*, 371 U. S. 68 (1962) in which this court dismissed the appeal for want of a substantial federal question. An examination of the Jurisdictional Statement in that case (No. 535, pp. 5, 36-37) (to which appellants refer) reveals that appellants there, like the appellants here, complained that the hearing held by the local urban renewal authorities prior to condemnation denied due process because it was legislative in nature and because it did not afford to appellants an opportunity

to adduce evidence or subpoena or cross-examine witnesses. Appellants in No. 535 also complained, as do appellants here, that the urban renewal authorities were motivated by a desire to redevelop the area for certain purposes as well as by a desire to clear slums (Jurisdictional Statement, No. 535, p. 8).

*Appellants Were Afforded Equal Protection of the Laws, Just As They Were Afforded Due Process.*

Appellants argue, Jurisdictional Statement pp. 20-23, that they were denied equal protection of the laws:

(a) Because Illinois Urban Renewal Statutes *require* a legislative hearing to be held by the local land conservation agency prior to the condemnation of any land in a conservation area, but merely *permit* but do not *require* a legislative hearing by the land clearance agency prior to the declaration of an area as slum and blighted; and

(b) Because in this case the Land Clearance Commission did not hold a legislative hearing before it declared the area in question to be slum and blighted.

The basic fallacy in appellants' argument is that they ignore the critical stage, viz., that at which land is sought to be taken.

There can be no denial of equal protection of the laws unless the alleged discrimination infringes appellants' private legal rights. Those rights are in no way affected until the condemnation stage, at which time they and all other owners of property located either in a slum and blighted or in a conservation area are afforded an identical, full judicial hearing on the legality of the urban renewal project, that is, the right of the state to take their property for public use. In this judicial hearing the issue of whether the area in question is slum and blighted or (in

the case of a conservation area) is incipiently so, and the issue of just compensation for the land to be taken is fully heard and adjudicated. Since appellants were afforded that judicial hearing, the difference, if any, in the availability of a preliminary legislative hearing as between clearance and conservation situations is irrelevant. Appellants' equal protection argument therefore suffers from the same fatal flaw as does their due process contention.

Apart from the insubstantiality of appellants' claim as a matter of substance the fact is that prior to the commencement of the condemnation proceedings they were actually afforded a legislative hearing before the Planning & Housing Committee of the Chicago City Council (Jurisdictional Statement p. 21 footnote). All interested persons were permitted to appear and be heard concerning the project. Many persons including some of the plaintiffs in No. 861 availed themselves of this opportunity. Since a preliminary legislative hearing was actually held appellants' objection that Illinois statutes do not *require* a hearing is academic.

Appellants concede in a footnote that this hearing took place but they appear to argue that it should be ignored because it was not held by the Chicago Land Clearance Commission and because it was held after the Commission had issued its preliminary declaration that the area was slum and blighted.

But, under Illinois Law (Ill. Rev. Stat. 1961, Ch. 67½ Sec. 75), that declaration was not effective and the Chicago Land Clearance Commission was without power to commence condemnation proceedings until the slum clearance project was approved by the Chicago City Council. Appellants had an opportunity to present their arguments before a committee of the City Council before that body approved the project. On these facts, appellants' equal protection argument is insubstantial and frivolous.

## II.

### The Legislative Definition of a "Slum and Blighted Area" Contained in the Illinois Statutes Satisfies Constitutional Requirements of Definiteness.

Appellants' argument that the legislative definition of a "slum and blighted area" contained in the pertinent Illinois statute is unconstitutionally vague is, despite appellants' protests to the contrary, an attempt to induce this Court to reweigh the sufficiency of the evidence upon which the Illinois courts have determined that the area in question is "slum and blighted". Furthermore, appellants did not advance this contention in the trial court, or in their 196 page brief in the Illinois Supreme Court.

They devote pages 11-14 of the Jurisdictional Statement to an argumentative statement of the evidence adduced in the trial court, and to a statement of the holdings of the trial court and the Illinois Supreme Court which is less than objective. They mistakenly assert: (1) that the Illinois statute insufficiently defines the elements of blight and decay; (2) that the number of buildings in the tract which must contain these elements is indefinite; and (3) that the condemning body need not show injury to public health, safety, morals and welfare.

The charge of vagueness is without foundation. The statutory provisions complained of define a "slum and blighted area" as:

> "* * * Any area of not less in the aggregate than two acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors,

are detrimental to the public safety, health, morals or welfare." (Ill. Rev. Stat. 1961, ch. 67½, Sec. 65(j), 91.103(i)."*

Appellants' advocacy to the contrary notwithstanding, this definition is neither vague nor difficult to understand. It lists a number of indicia of blight and decay and permits clearance only in those situations in which the court before which the condemnation action is pending finds on the evidence adduced that the elements of slum and blight as defined by the legislature are present in the buildings and improvements throughout the area to the degree that the effect is detrimental to the public safety, health, morals or welfare.

The terms in the statute are commonly used in the real estate business. All expert witnesses agreed that "dilapidation" means substantial physical deterioration and that "obsolescence" means conditions which render a building so outmoded as to be inappropriate as a dwelling. The other terms in the statute are words in common use and require no definition.

Appellants complain that under Illinois law condemning bodies are not required to prove existence of detriment to public safety, health, morals or welfare by evidence separate from and independent of the proof of the presence of the elements of blight referred to in the statute. This contention, which apparently denies there is any consequential relation between the existence of a slum and social detriment arising therefrom flies in the face of the uni-

* This definition is either identical or very similar to the definitions of slum and blighted areas contained in urban renewal legislation enacted in the vast majority of the states. (See Appendix J to the petition for certiorari in case No. 861.) The definition is very similar to that contained in the District of Columbia statute sustained by this Court in *Berman* v. *Parker*, 348 U. S. 26, 28 (1954). Insofar as differences exist, the Illinois statute is more definite and explicit.

versal experience of mankind. In the last thirty years the United States Congress and most state legislatures have made findings of the existence of this relationship; and courts have taken judicial notice of the same facts. As this Court stated in *Berman* v. *Parker*, 348 U. S. 26, 32 (1954):

> "Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river."

Appellants' argument that it is sufficient under Illinois law that it merely appear that as few as two or more buildings suffer from the statutory elements of blight in order to justify clearance of an entire area as a slum and blighted area is an obvious distortion and a strawman. Nothing in the trial court's order or the opinion of the Illinois Supreme Court warrants appellants' biased conclusion that the Illinois statute would be satisfied by evidence that but two or three buildings in an area suffer from slum and blight elements. Appellants argue that Illinois courts should state the minimum percentage of blight required to justify clearance, but the Illinois Supreme Court has properly concluded that the nature of the subject matter precludes an arithmetic standard. The statute lists at least ten separate elements of blight. Each may be present in any given building to a greater or lesser degree. They may exist in various buildings in differing combinations. It would be impossible for even a trained statistician to list all of the possible combinations of these

elements that could be present in a given area and satisfy the statutory requirements.

In any event, the evidence of blight received in evidence in this case demonstrates that one or more of the statutory elements are present in substantial degree in almost all of the buildings in the area. Consequently, appellants' "two or more buildings" argument has no basis in fact insofar as the case at bar is concerned.

Appellee called as witnesses six highly qualified real estate men. Between them they had personally examined 330 of the 332 parcels in the area. They testified that building on 158 of those parcels were in a state of dilapidation, *i.e.*, they contained serious elements of physical deterioration to the degree that it would not be economically feasible for a private owner to repair them to eliminate that deterioration. They testified that buildings on 196 parcels were in a state of obsolescence. Their testimony was that in all, 299 of the 330 parcels suffered from one or more of the statutory elements of slum and blight. It was established that the average age of the buildings in the area is 75 years. It was proved that most of the buildings lack central heating facilities and that a substantial number of the buildings lack sanitary facilities (A. 307-370).

The chief biostatistician of the Chicago Board of Health testified that the rates of syphilis, infant mortality and illegitimacy in this area are from 81% to 174% higher than the rates for the City of Chicago as a whole (A. 295, 383).

Photographs of about ½ of the buildings in the area were introduced in evidence—some by appellants (Rec. 989, 997, 998-1038, A. A. 15, 21, 25-30, 35-53). They are more eloquent than any verbal description of the dilapidation, obsolescence and decay which characterizes this area. The photographs are especially informative because they graph-

ically depict the presence of excessive land use typical of slums, the almost total absence of yards in the area and the consequent lack of light and air for the inhabitants. There is, therefore, no factual basis for the appellants' charges of vagueness.

Appellants' argument is equally unsupportable by legal authority. None of the cases cited by appellants has even the remotest similarity to either the statute or the fact situation involved in this case. All of the cases they rely upon and all of the cases in which this Court has invalidated a statute for vagueness concern penal statutes which prescribed standards of conduct for individuals and which imposed penalties for violations of the statutory provisions.*

The Illinois statute at issue here authorizes a general governmental program of slum clearance and urban renewal. It does not purport to regulate the conduct of individual citizens, nor does it impose any penal sanctions upon citizens. Decisions invalidating statutes regulating and penalizing individual conduct are inapplicable.

Appellants recognize this flaw in their argument. They attempt to analogize their position to that of a citizen affected by a penal statute by arguing that residents of slum areas need to know what they can do to improve their

* Appellees' research has disclosed only one case in which a statute was invalidated on grounds of vagueness and which was not a proceeding to enforce a penalty imposed by the statute. This case, *A. B. Small* v. *American Sugar Refining Co.*, 267 U. S. 233 (1925), involved a wartime penal statute which had already been held unconstitutional in a penal proceeding. Later a party attempted to use the statutory provision as a basis for a defense of illegality in a contract action. The Court merely held that the statute was void and could not be used for this purpose any more than for the imposition of a penalty. The Court has expressly recognized that standards of definiteness are more strict in cases involving penal statutes. *Winters* v. *New York*, 333 U. S. 507, 515 (1948).

areas so as to avoid slum clearance. Obviously, this analogy falls far short of demonstrating that the statute regulates individual conduct or imposes a penalty. In any event, the statute gives ample notice to residents of the factors which make areas "slum and blighted." If residents of slum areas are unable to rehabilitate them through their own efforts, it is not because of any ignorance of the factors which make the area a slum.

## III.

### The Appellants Have No Standing to Seek Review of Compliance by Appellee With Provisions of the Federal Housing Act.

After a full judicial hearing, the area in question has been adjudicated to be a slum and blighted area. Property owners in the area are receiving just compensation for their property in condemnation proceedings.

Nevertheless, appellants argue that the slum clearance project is being financed in part by a Federal subsidy; that compliance has not been had with certain provisions of the Federal subsidy act; and that this somehow invalidates the slum clearance project so as to undermine the sovereign power of the State of Illinois to eradicate slums by condemnation proceedings and subsequent clearance. This argument is substantially identical to that made in Case No. 861. The answer is that appellants have no standing to raise these objections, and that in any event the objections are without merit.

In order to afford appellants standing to complain of these matters, they must show that the particular action complained of has violated their private legal rights as distinguished from their rights as members of the general public. *Frothingham* v. *Mellon*, 262 U. S. 447 (1923);

*Alabama Power Co.* v. *Ickes*, 302 U. S. 464 (1938); *Tennessee Electric Power Co.* v. *T. V. A.*, 306 U. S. 118, 137 (1939); *Perkins* v. *Lukens Steel Company*, 310 U. S. 113, 125 (1940); *Kansas City Power & Light Co.* v. *McKay*, 225 F. 2d 924, 931 (D. C. Cir. 1955), cert. den. 350 U. S. 884 (1955); *Gart* v. *Cole*, 263 F. 2d 244, 250 (2d Cir., 1959), cert. denied, 359 U. S. 978 (1959).*

Alleged irregularities in the obtaining or application of some of the federal subsidy funds used by appellee to discharge condemnation judgments and to clear the slum area neither affect nor infringe any of the appellants' private legal rights. In *Allied-City Wide Inc.* v. *Cole*, 230 F. 2d 827, 828 (D. C. Cir., 1956), the Court of Appeals stated, in rejecting contentions of residents of a slum clearance area that they had standing to complain of alleged non-compliance with provisions of the Federal Housing Act:

> "Appellants will be evicted, if at all, by condemnation proceedings lawfully maintained by New York City. One who will be injured by another's lawful use of money has no standing to assert that a third person's action in providing the money will be illegal."

The Illinois Supreme Court properly held, in accordance with well-established principles, that the source of the funds employed by a public body to pay condemnation awards is of no concern to the condemnees. (Supplement to Jurisdictional Statement 5a.) *City of Chicago* v. *Sanitary District*, 272 Ill. 37, 41-42, 111 N. E. 491, 493 (1916); *Summerfield* v. *City of Chicago*, 197 Ill. 270, 283, 64 N. E. 490, 494 (1902); *C. B. & Q. R. R. Co.* v. *Naperville*, 169 Ill. 25, 48 N. E. 335 (1897).

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* Appellants' suggestion (Jurisdictional Statement, pp. 32-33) that it is somehow invalid under the Supremacy clause for Illinois courts to adopt, in condemnation proceedings, the criteria of standing developed by this court is frivolous.

Appellants attempt to avoid the effect of these decisions by arguing that the Federal subsidy statute was enacted for their personal protection; that the statute created private legal rights in them as owners of property in slum clearance areas to require compliance with all provisions of the subsidy statute; and that the statute made them third party beneficiaries of subsidy contracts executed by the Federal and local agencies. There is no indication of any of this in the language of the Federal statute or its legislative history. On the contrary, it is clear that the provisions in the statute for the guidance of the Federal administrator in determining whether in the exercise of his discretion to grant a subsidy, were intended to prevent waste of public funds and protect the public generally. The public generally, including local residents as part of that group, are benefited by the clearance of slums.

Attempts by property owners or others to complain as private litigants of alleged non-compliance with the Federal Housing Act have been rejected repeatedly by the courts on the ground of lack of standing to sue. *Allied-City Wide, Inc.* v. *Cole*, 230 F. 2d 827, 828 (D. C. Cir., 1956); *Pittsburgh Hotels Assn., Inc.* v. *Urban Redevelopment Authority of Pittsburgh*, 202 F. Supp. 486, 492-493 (W. D. Pa. 1962), affirmed 309 F. 2d 186 (3rd Cir., 1963), cert. denied; sub. nom. *Hilton Hotels Corporation* v. *Urban Redevelopment Authority*, 372 U. S. 916 (1963); *Taft Hotels* v. *Housing & Home Finance Agency*, 162 F. Supp. 538 (D. Conn. 1958), affirmed 262 F. 2d 307 (2nd Cir., 1958), cert. denied 359 U. S. 967. (1959); *Hunter* v. *City of New York*, 121 N. Y. S. 2d 841, 846 (Sup. Ct. 1953); *Kaskel* v. *Impelletieri*, 121 N. Y. S. 2d 848 (Sup. Ct., 1953). The same result has been reached in similar cases involving other federal statutes. *Clement Martin* v. *Dick Corporation*, 97 F. Supp. 961, 964 (W. D. Pa. 1951); *Hoffman* v. *Stevens*, 177 F. Supp. 898, 903 (M. D. Pa. 1959); *Sapp* v. *Hardy*, 204 F. Supp. 602

(D. Del. 1962); *Choy* v. *Farragut Gardens*, 131 F. Supp. 609 (S. D. N. Y. 1955).

If appellants' contentions were accepted, the inevitable result would be the injection of a host of cumbersome, collateral issues into every slum clearance condemnation action which is being financed in part by a Federal subsidy. Most of these issues involve general policy questions and sociological determinations inappropriate for judicial determination.

A typical example is the "relocation" issue which appellants have emphasized in their arguments in this appeal* and on No. 861. Appellants concede that appellee has prepared extensive written plans for the relocation of residents of these areas and that the administrator of the HHFA has certified that appellee has complied with the provisions of the Federal Housing Act concerning relocation. But appellants seek to go behind this determination. They offer to prove that the *operation* of the admittedly proper written relocation plan is *in practice* so inadequate that there is an absence of a "feasible plan for relocation" under the Federal Housing Act. This theory, if accepted, would make relevant the propriety of every individual relocation in any slum clearance project undertaken in Chicago since 1947. Occupants of more than 23,000 separate living units have been relocated during this period.

In considering the propriety of each individual relocation, evidence could be adduced concerning the condition of the old neighborhood and residences, distance from jobs, rent level, available public utilities and public and commercial facilities, and a comparison of these facts with the same matters in the new residences—or in any one or more residences to which the family did not move but

* None of the appellants contend that they are personally adversely affected in this regard or that they face any adverse relocation situation.

to which they were referred by appellee's Relocation Department.

Appellants cannot brush off these problems as a "parade of horribles" as they have sought to do in the lower courts. Appellants have attached affidavits to their complaint in No. 861* which purport to summarize a part of the evidence appellants would seek to adduce to prove the alleged inadequacy of relocation plans. These affidavits consist of a table of statistics prepared by counsel for appellants and of a number of case histories. The case histories concern relocations in 1959-1962 in an area in the City of Chicago which is more than seven miles from the area involved in this case. If this evidence were introduced, appellee obviously would be entitled to inquire into the data underlying the statistics and to introduce rebuttal evidence concerning other relocations.

Similarly, appellants claim the right to adduce evidence concerning alleged inadequacies in appellee's "General Plan" for urban renewal, not only for the areas involved in these sections, but for the entire City of Chicago. They urge this court to invest them with the right to investigate the entire situation of housing for Mexicans and Negroes in the City of Chicago and the question of whether appellee has "explored . . . every possibility" of developing a plan which would permit a "maximum number" of "sound structures" to remain in the area.

Clearly, the Solicitor General was correct when he stated in his brief in opposition to the petition for certiorari in No. 861 that these matters do not lend themselves to judicial inquiry. It would require evidence of Congressional intent far stronger than the silence upon which appellants rely to infer that Congress intended to invest each prop-

* These affidavits are incorporated by reference in the traverses filed by appellants in the trial court in this action as Exhibits F-1 and F-2.

erty owner and resident of a slum clearance area with a private legal right to review these questions. Armed with standing to explore these collateral subjects it would not be difficult for hostile property owners and residents substantially to hinder and in some cases to prevent urban renewal.

Insofar as a court might reasonably inquire, the undisputed facts demonstrate that no violations of the Federal Housing Act have occurred. Appellants concede there was a hearing before a Committee of the City Council in April, 1961. The Federal Administrator of the HHFA certified that the Commission had complied with the "general plan" and "relocation plan" provisions of the Federal Housing Act. This certification came after appellants and others had filed a voluminous brief with the Administrator.

The record in this case contains or describes lengthy public documents designated by the appellee as the general plan for the City of Chicago and as plans for relocation of residents displaced by slum clearance. (VI 1053, A. 456, 457, 451, 474.) Appellants do not contend that these documents are fraudulent in any respect. These facts are not only of record but are contained in a stipulation signed by appellants' counsel (A. 451-477). We are amazed that counsel impugn their authenticity. (Reply Brief of Petitioners in No. 861, p. 12.)

## CONCLUSION.

Appellants' contentions are but restatements of arguments made and uniformly rejected in prior cases. The Jurisdictional Statement sets forth no substantial Federal question and the appeal should be dismissed.

Respectfully submitted,

JOHN C. MELANIPHY,
Corporation Counsel of the City of Chicago,
THOMAS A. FORAN,
Special Assistant Corporation Counsel,
MILTON P. WEBSTER, JR.,
Assistant Corporation Counsel,
*Attorneys for Appellee.*

ALBERT E. JENNER, JR.,
THOMAS A. FORAN,
KEITH F. BODE,
*Of Counsel.*

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No. 984

IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1962.

GUILLERMO GONZALEZ, et al.,
*Appellants,*

*vs.*

CITY OF CHICAGO, a municipal corporation,
*Appellee.*

On Appeal From The
Supreme Court of Illinois

## BRIEF OF APPELLANTS IN OPPOSITION TO THE MOTION OF APPELLEE TO DISMISS THE APPEAL FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION.

GEORGE W. OVERTON
FREDERIC D. HOUGHTELING
F. RAYMOND MARKS, JR.
DONALD PAGE MOORE,
Attorneys for Appellants

OVERTON, MARKS, SIMONS & MOORE
105 West Adams Street
Chicago 3, Illinois
CEntral 6-6945
Of Counsel

The Scheffer Press, Inc.—ANdover 3-6850

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IN THE

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OCTOBER TERM, A. D. 1962.

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## *No. 984*

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GUILLERMO GONZALEZ, et al.,

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CITY OF CHICAGO, a municipal corporation,

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# BRIEF OF APPELLANTS IN OPPOSITION TO THE MOTION OF APPELLEE TO DISMISS THE APPEAL FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION.

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## I.

### The Hearings Before the Chicago City Council Met Neither the Requirements of the Federal Housing Act nor of Due Process of Law.

Appellee's motion and brief appear to argue that the federal Housing Act and contitutional due process require at most a legislative hearing before condemnation begins; that such a hearing was held in this case; and that all other defects in the Illinois procedure are cured by the very narrow hearings held by the Circuit Court in the instant case. Appellants maintain that each of

these positions is inadequate to resolve the statutory and constitutional difficulties presented; and therefore a substantial federal question exists.

**A. Not Even a Legislative Hearing Was Held by Any Appropriate Body in This Case.**

As appellee points out, the Chicago City Council did hold a legislative hearing prior to its ratification of the Chicago Land Clearance Commission's prior designations and renewal plans. Appellee now seeks to cure the defects in the Illinois procedure by stating that the Land Clearance Commission (and its successor, the Department of Urban Renewal) really did nothing; it was the Chicago City Council which made the "legislative declaration of the area as slum and blighted" (Motion and Brief p. 3). By this argument, appellee attempts to assert that appellants had a legislative hearing, prior to the first effective action, and hence the requirements of due process under the Fourteenth Amendment to the United States Constitution and the hearing requirement in the federal Housing Act (42 U.S.C. 1455(d)) have been met. This argument relegates the action of the Chicago Land Clearance Commission into a mere formality of the thinnest substance. It speaks as though the City Council was the only body really making the designation and planning decisions.

It is obvious that the Illinois legislature thought otherwise. The Urban Renewal Consolidation Act, 67½ Ill. Rev. Stat. 1961 §§91.101-136, and its predecessor, the Blighted Areas Redevelopment Act, 67½ Ill.Rev.Stat. 1961 §§63-91, mention the Chicago City Council in a number of ways, and gives the Council certain powers of veto. But the entire argument of appellees depends upon a section of the statute never quoted. The Illinois Blighted

Areas Redevelopment Act (67½ Ill.Rev.Stat. 1961 §75) states:*

> "Whenever a Commission determines that a particular slum or blighted area, or any other area which may constitute a redevelopment project, as herein defined, should be acquired pursuant to the provisions of this Act, such determination together with an accurate description of the area included in such determination and the date on which the determination was made shall be immediately set forth in the records of the Commission. Such determinations by a Commission may be made from time to time and need not all be made at one time. Each such determination shall be evidenced by a resolution adopted by the Land Clearance Commission.
>
> ". . . A certified copy of such resolution shall be delivered to the State Housing Board and to the governing body of the municipality in which the area is situated. No such determination shall be of any force or effect until such time as it has been approved by the State Housing Board and the governing body of the municipality in which the area is situated. 1947, July 2, Laws 1947, p. 1072, §13; 1949, Aug. 3, Laws 1949, p. 997, §1."

All the investigative and inquisitorial powers of the urban renewal program are conferred upon the Land Clearance Commission and its successor, the Department of Urban Renewal. See 67½ Ill. Rev.Stat. 1961 §§73, 74, §91.110, §91.124(k). None is conferred upon the City generally.

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* The present effective equivalent of this section in the Consolidation Act is 67½ Ill.Rev.Stat. 1961 §91.111. However, the Consolidation Act eliminates the requirement of Housing Board approval.

Appellee's extended attempt to make the Chicago City Council the deciding body, and its hearing an adequate procedural substitute, fails to note a necessary characteristic of a satisfactory legislative hearing: *the capacity for differentiated response.* Under the Illinois statutes the Chicago City Council could only accept or reject the Land Clearance Commission's designation. It could not modify, it could not respond to suggestions, and even if it attempted to do so, it lacked the investigative and inquisitorial powers necessary to make a sophisticated response. Congress, in requiring a public hearing (Federal Housing Act, 42 U.S.C. 1455(d)), probably intended that the body conducting the hearing be capable of a differentiated response; and a hearing before a body capable of such a response is, appellants assert, a minimum of due process. By the time a project has reached the stage of planning and designation by a local urban renewal body, and where the City Council has merely a veto, the burden of persuasion put upon the protestants is, as a practical matter, almost impossible to meet. Such a hearing cannot be a dialogue or argument of relative values: it becomes an all or nothing affair, nearly worthless to those who would protest the projected action.

**B. A Legislative Type Hearing, Even If it Had Been Held, Is Inadequate to Protect the Statutory and Constitutional Rights of Appellants.**

Even if the City Council's powers in regard to urban renewal had been sufficient to render its hearing an adequate legislative hearing, no such hearing is adequate to effectuate the Congressional purpose in the federal Housing Act and the minima of due process required by the Fourteenth Amendment. Appellants will not at this time elaborate on the positions stated in their Juris-

dictional Statement (pp. 20-23) and in the Petition for Certiorari in No. 861, the related federal case (pp. 26-29).

Appellee suggests that since the amount of the award was not appealed, no injuries could have been sustained which are recognizable before this Court. This assumes that a wrongful taking can be released by just compensation*—which this Court has never stated.

If appellants had been permitted, prior to the designation, to have a judicial hearing on the question of the existence of slum and blight and the validity of the taking, the condemnation proceedings could be relegated to the simple question of the award, with perhaps a judicial review of the support in the record of the administrative findings. Furthermore, the postponement to the condemnation proceedings of any hearing on public use gives an overwhelming advantage to the condemning body. It can pick and choose its defendants, gradually disintegrate the community, and then sue the objecting landowner after the neighboring population has disappeared,—apart from the fact that in Illinois only title holders of record are parties to condemnation proceedings.

### C. The Judicial Hearing Held in the Instant Case Was Inadequate Even If it Had Been Timely.

Appellee's principal argument appears to be that aplants are asking the Court to review a moot matter and examine some hypothetical question. Much is made of

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* Both parties were clear that appellants, in accepting judgment for a specific award, were waiving any appeal on the amount of the award, but that no consent judgment was otherwise entered.

supposedly extensive hearings on the allegedly sole relevant issue. Appellee has shown in the Jurisdictional Statement (pp. 23-31) that the hearings in the Circuit Court proceeded on legal theories so vague as to render them no satisfactory adjudication of the rights of the parties. The Illinois Supreme Court not only affirmed the judgments below, but practically made vagueness a virtue. Even as to the sole narrow issue presented in these hearings—whether the Roosevelt-Blue Island area was slum and blighted—the hearings failed to give appellants any framework within which issues could be resolved. For the reasons shown elsewhere in this brief (pp. 11-13) it is pointless to argue that appellants have had a hearing when at such hearing no consistent or satisfactory definition of the statutory terms can be agreed upon by the witnesses.

In Roosevelt-Blue Island one parcel owner was called upon to litigate the issues involved in some 300 parcels. He was not permitted to make any preliminary use or take any advantage of the studies which (one would like to assume) had been made by the petitioner, Chicago Land Clearance Commission, since the Circuit Court denied all discovery of such matters (A. 116) and the appellee did not produce one witness on its own who even purported to have taken part in any study of the area prior to designation.

## II.

### Appellee's Brief Demonstrates on its Face the Denial of the Equal Protection of Laws.

Appellee, in arguing that appellants were not denied equal protection, states that mere "preliminaries", as ap-

pellee would have them, are insignificant,* and since both conservation defendants and slum clearance defendants can having hearings in the condemnation proceedings, no significant or judicially recognizable difference exists.

The Illinois legislature thought otherwise, having inserted *two* provisions for hearings in the conservation sections of the Consolidation Act (67½ Ill.Rev.Stat. 1961 §§91.120(b), 121). It cannot be assumed to have done so as an exercise in grammar. The face of the statute makes clear that the legislature felt something significant happened at the designation level.

## III.

### Payment of Just Compensation Does Not Abolish the Constitutional Requirement of Public Use.

Throughout Appellee's Motion and Brief there runs an assumption, sometimes tacit, sometimes explicit; that is, that the constitutional requirement of public use is either moribund or dead, and that, in slum clearance, *Berman* v. *Parker*, 348 U.S. 26 (1954) virtually removed the requirement from the field of constitutional law. Appellants will seek to demonstrate not only that this position has not been reached by this Court; but also that the problems of public use, as applied to federally financed urban re-

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* By the "preliminaries" appellee refers to the designation of the area by the Land Clearance Commission, and the passage of the City Council ordinances ratifying that determination. Appellee argues that the first is relevant only if it is useful to keep Harrison-Halsted residents from contesting their status as of the date of condemnation (Motion and Brief, p. 3); and the second is relevant only for the purpose of arguing that there was a hearing prior to governmental action.

newal and under the United States Constitution, present substantial problems of federal law not yet wholly resolved. These problems will be faced by the Court in the instant case.

**A. Just Compensation Does Not Satisfy All Constitutional Rights.**

Appellee argues (Motion and Brief, pp. 4-7) that since Appellants do not contest the condemnation award made in this case, they cannot complain of grievances as to the Illinois procedures in eminent domain and urban renewal. Appellee would require them to liquidate their grievances into some monetary claim or sum. Appellee's argument requires a conception of just compensation wherein all property of a citizen has an inchoate price tag attached to it and the state in which he resides has a running option to pay that price.

Appellants, on the other hand, assert that a wrongful taking is damage per se and needs no liquidation to a monetary sum or claim; indeed, if Appellee were correct the law of eminent domain would consist merely of the adjudication as to which of two prices would be available to the condemning body; a price for illegal takings and a price for legal takings. To this date the courts have held that there is no price at which land can be acquired illegally.

Appellee complains (Motion and Brief p. 6) that the record offers no proof that the injuries alleged by appellants would be substantial. Appellee completely ignores that evidence and discovery on any issues of these was denied by the Circuit Court. In effect, the Circuit Court sustained a demurrer to every portion of appellee's traverses other than the status of the Roosevelt-Blue Island

Tract (A. 115). Of course, the record is devoid of evidentiary proof on these points; but without having committed a contempt of court in the Circuit Court, appellants were without power to provide such proof.

**B. Berman v. Parker Defines Rather Than Eliminates the Public Use Requirement.**

The Court will note that both sides in this litigation and in the related federal case No. 861 refer constantly to *Berman* v. *Parker*, 348 U.S. 26 (1954) as a source of law. A review of that critical case is in order here. *Berman* v. *Parker* was an attack upon the District of Columbia urban renewal program and a reversal of a lower court case, *Schneider* v. *District of Columbia*, 117 F.Supp. 705 (1953). The plaintiff, seeking an injunction in the District Court, attacked the constitutionality of the urban renewal statute on the ground that the property (to be sold to a private redeveloper) was being taken for a private use and that his building, apparently admittedly a sound structure, was not slum or blighted. This Court held that Congress acting in the urban renewal field was exercising the police power over the District and that reasonable men might have concluded that the elimination of slums on an orderly basis was necessary for the public health and safety. The Court then affirmed what had even prior to *Berman* been the law in Illinois: slum clearance per se is a public use; it may proceed on an area rather than a building by building basis; sound property within an area may be taken; and the sale to a private redeveloper does not vitiate the public use. See *Zurn* v. *City of Chicago*, 389 Ill. 114 (1945); *Ross* v. *Chicago Land Clearance Commission*, 413 Ill. 377 (1952); *Chicago Land Clearance Commission* v. *White*, 411 Ill. 310 (1952).

Secondly, *Berman* v. *Parker* stands for another important proposition in the field of constitutional law; the

constitutional requirement of "public use" will not be a mask behind which the courts will re-erect the discarded concept of substantive due process and sit in review of the wisdom of public projects. The quotation from the case contained in appellee's Motion and Brief (p. 13) is quoted without noting the significant and consistent use of the word "may". The Court states, in the famous passage so quoted, what the legislature *might* have had in mind; what reasonable men *could* have held. *Berman* v. *Parker*, 348 U.S. 26, 32 (1954).*

But this Court made a third finding: urban renewal is an exercise of the police power. *Berman* v. *Parker*, 348 U.S. 26, 32 (1954). What this means in the instant case, in urban renewal generally, and for the future, is that prior case law referring to "legislative" decisions to take land has limited relevance. Cases cited by Appellee such as *Bragg* v. *Weaver*, 251 U.S. 57 (1919); *Rindge* v. *County of Los Angeles*, 262 U.S. 700 (1923) are good law in the general field of eminent domain. But urban renewal is not part of the general field of eminent domain.

The State of Illinois has a general power of eminent domain, as an attribute of sovereignty; but its right to exercise the police power is not plenary, and it cannot extend its police power by referring to its overall right to condemn. This distinction has been noted by a prominent commentator:

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* The purpose of the language is that of the famous brief of Louis D. Brandeis in **Muller v. Oregon**, 208 U.S. 412 (1908), which brief closes (p. 113) with the statement:

> "We submit that in view of the facts above set forth [a long parade of expert medical and sociological data] it cannot be said that the Legislature of Oregon had no reasonable ground for believing that the public health, safety, or welfare would not require a legal limitation on women's work . . . to ten hours in one day."

> "That government may use the eminent domain power to achieve almost any public purpose does not dispose of the question. Regulation as a means of achieving a governmental objective cannot necessarily be used wherever the eminent domain power may be used." Dunham, *Griggs* v. *Allegheny County in Perspective*, 1962 Sup. Ct. Rev. 63, 73.

The instant case presents that coupling of police power and eminent domain which is inevitable in all urban renewal, and will be characteristic of many federally subsidized programs to come. Hence the constitutional issues raised are novel, without guidance from the past; and substantial in extent. See Opposition Brief of the Solicitor General in the related Federal case, No. 861, p. 15.

## IV.

### Appellee Distorts the Evidence in Attempting to Escape the Fatal Vagueness of the Illinois Statute.

Appellee, to begin with, asserts that appellants failed to raise the question of vagueness below (Motion and Brief p. 11). Major aspects of the vagueness problem were in the record only *after* the Illinois Supreme Court rendered its opinion, and were created by it; but at all times below the parties have been deeply concerned with the vague definitions of the Illinois statute. Appellants in their brief in the Illinois Supreme Court (pp. 131-136, 139, 146, 147) attached the inconsistency and vagueness of the Illinois definitions, in showing the inadequacy of the evidence to support any plausible definition.*

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* Because this point has been raised, appellants plan to file a supplemental record consisting of their brief in the Illinois Supreme Court. A motion for leave to file this record will either precede or follow the filing of this brief in short order.

In a selective analysis of some of the evidence, appellee attempts to make easy a problem which seriously troubled the trial judge and counsel before the trial court, and which is built into the Illinois statute. For example, appellee states (Motion and Brief p. 12) that its witnesses all agreed that "dilapidation means substantial physical deterioration", a statement which seriously distorts the testimony of appellee's witnesses, who were primarily concerned with the economic aspects of physical decline. Space does not permit complete elaboration, but the following citations to the record by witness and abstract page number may suffice:

Farren, 309, 311-312; Lannon, 317, 318-321; Walman, 336, 337, 338, 340; Renzi, 347-348, 349, 352; Hult, 354, 355, 357; Leyden, 361, 363-365.

Appellee's statement "All expert witnesses agreed . . . that 'obsolescence' means conditions which render a building so outmoded as to be inappropriate as a dwelling" cannot be supported by the testimony submitted by appellee below. Space does not permit a complete quotation of each of the various definitions, but the following:

Farren, 309, 312-13, 315; Lannon, 324, 326, 327, 328; Walman, 337, 342-43; Renzi, 348, 350-52; Hult, 354, 357-58; Leyden, 362, 365-66.

Appellee further states, "The other terms in the statute are words in common use", but appellants suggest that "deleterious land use," and "faulty arrangement or design", are neither terms of art nor in the common language of ordinary me

The full problem of the vagueness of the Illinois statute was not apparent until the Supreme Court rendered its opinion. A loose discretionary definition of slum and blight without fixed minimum or standard was, perhaps, tolerable as long as there had to be a finding that the physical defects led to adverse social conditions.* The Illinois Supreme Court, within the proper scope of its authority, has determined that the Illinois legislature made a conclusive legislative finding that the enumerated physical factors were detrimental to the public health and welfare. But the removal of the requirement of proof as to adverse social effect removes a substantial element of certainty from the statute. Hence, the significance of the vagueness of the physical terms, as also created by the Illinois Supreme Court, is apparent only when it is realized that the Court imposed no other restraint of any kind upon the condemning body.**

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* Appellee's statement, (Motion and Brief p. 14) as to the health statistics, ignores the insignificantly small number of instances as to which testimony was introduced. Since the Illinois Supreme Court has ruled that the facts in this regard are irrelevant, further elaboration is not needed.

** Appellee argues that the prior case law of vagueness relates solely to penal statutes. But urban renewal statutes are in many ways exactly such statutes. It should be remembered that under **Berman v. Parker**, 348 U.S. 26 (1954), the faultless owner of sound property can lose that property because of the conduct and situation of his neighbors. In many ways this goes beyond a penal statute since an innocent man's own conduct may not be used as a defense.

## V.

### The Applicability of the Federal Housing Act Presents a Substantial Federal Question.

Appellee's brief (pp. 16-21) presents no new arguments with regard to the applicability of the federal Housing Act to local condemnation proceedings beyond those advanced by the Illinois respondents in No. 861. Appellants have consistently maintained that the Act binds the local agency by reason of the Supremacy clause to the United States Constitution (U.S. Const., Art. VI); by reason of the contract between the United States and the local public agency; and because the federal Housing Act intended persons in the status of these appellants to be protected by certain provisions of the Act.

Appellee, in meeting these arguments, again brings forward its universal remedy of *Frothingham* v. *Mellon*, 262 U.S. 447 (1923), the irrelevance of which has already been demonstrated in the Petition for Certiorari in No. 861 (pp. 17-19) and in the Jurisdictional Statement (pp. 32-33).

## VI.

### Affidavits and Stipulations Admitted and Contested.

Appellee contends that in No. 861 the appellants deny the authenticity of documents which in the instant case have been stipulated. (Motion and Brief p. 21) However, an examination of the stipulation referred to (A. 451-477) indicates that the only thing agreed to by counsel for appellants was that certain papers were filed with the Housing and Home Finance Agency and some of them were adopted by the bodies referred to on the dates mentioned. However, appellants have not, and the careful wording of the stipulation clearly shows that they

have not, agreed that the facts shown, for example, in the Chicago Plan Commission Resolution of October 6, 1960 (A. 457-458, are correct; all that has been stipulated was that on October 6, 1960, the resolution set forth was adopted by the Plan Commission and a copy of it was forwarded to the Housing and Home Finance Agency. As to the relocation plans, all that was stipulated was that three documents so described were filed with the Housing and Home Finance Agency.

## VII.

### Other Questions.

Appellants assume that this Court can examine the Jurisdictional Statement in *Grisanti* v. *The City of Cleveland,* 371 U.S. 68 (1962) (No. 535 this term), which in its total context clearly is a different case from the instant one. The cases referred to (Motion and Brief, pp. 7 and 8) on examination will be found almost universally to refer to issues settled in *Berman* v. *Parker,* 348 U.S. 26 (1954). As to Appellants' aims in this litigation, both in the instant case and in the related federal case No. 861, they are as follows: As to the Harrison-Halsted Tract, they seek to void the illegal change of plans from residential to institutional use; as to the western half of the Congress-Racine Tract, they seek to void the illegal conversion of that tract from a residential conservation plan to clearance and institutional use; as to the eastern half of the Congress-Racine Tract and the entire Roosevelt-Blue Island Tract, they seek to void all action whatsoever. This is not an action to compel residential redevelopment; it is an action to preclude illegal redevelopment.

## CONCLUSION.

Appellants accordingly submit that the motion to dismiss should be denied as it has been shown that the Questions Presented are federal in nature, substantial in extent, and hitherto undecided.

Respectfully submitted,

GEORGE W. OVERTON,
FREDERIC D. HOUGHTELING,
F. RAYMOND MARKS, JR.,
DONALD PAGE MOORE,
*Attorneys for Appellants.*

## APPENDIX TO APPELLANTS' BRIEF IN OPPOSITION.

Urban Renewal Consolidation Act, 67½ Ill.Rev.Stat. §91.123(k):

"(k) In case of contumacy or refusal to obey a subpoena issued to any person, the Circuit or Superior Court of the county in which such person resides or has his principal place of business, upon application by the Department, shall have jurisdiction to issue to such person an order requiring such person to appear before the Department or before any member, employee or agent thereof designated to conduct such hearing there to produce evidence, if so desired, or there to give testimony touching the matter under investigation and any failure to obey such order of the Court may be punished by said court as a contempt thereof.

"The officials of any city, village or town and the members of any zoning commission shall, when requested so to do by any member of the Department, make available for inspection by the Department or by any committee, employee or agent of the Department, any and all records and data which they may have pertaining to an area which is then being investigated."

(Other sections of the Act are in the Appendices to the Jurisdictional Statement)